

Übersetzung durch Neil Mussett

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## **Act on Senior Judicial Officers**

### **(Rechtspflegergesetz – RPflG)**

Act on Senior Judicial Officers in the version of the promulgation of 5 November 1969 (Bundesgesetzblatt [Federal Law Gazette] Part I, page 2065), as most recently amended by Article 20 of the Act of 22 February 2023, Federal Law Gazette [BGBl.] Part I No. 51

#### **Division 1**

#### **Tasks and status of senior judicial officers**

##### **Section 1**

##### **General status of senior judicial officers**

Senior judicial officers shall carry out the judicial administration tasks assigned to them by this Act.

##### **Section 2**

##### **Prerequisites for service as a senior judicial officer**

(1) A civil servant of the judicial service who has completed a preparatory service of three years and who has passed the senior judicial officer examination may be entrusted with the tasks of a senior judicial officer. The preparatory service shall impart to the civil servant in a course of studies of a University of Applied Sciences (*Fachhochschule*) or in an equivalent course of studies the factual knowledge and methods, as well as the vocational practical skills and knowledge which are required to carry out the tasks of a senior judicial officer. The preparatory service shall consist of specialist studies of at least eighteen months' duration and of vocational practical study periods. The vocational practical study periods shall comprise training in the key areas comprised by the tasks of a senior judicial officer; the practical training may not last less than one year.

(2) Persons may be admitted to the preparatory service who have attained a level of education giving entitlement to study at an institute of higher education or who provide proof of a level of education recognised as equivalent thereto. Civil servants of the intermediate judicial service may be admitted to training as a senior judicial officer if they have worked for at least three years in the intermediate judicial service following the service category examination and, according to their character and their performance to date, appear to be suited to serve as a senior judicial officer. The *Länder* may determine that the time of service within the intermediate judicial service may be counted up to a duration of six months towards the vocational practical study periods.

(3) A person who possesses the qualification for judicial office may also be assigned upon their request with the tasks of a senior judicial officer.

(4) Successfully completed law studies may be counted up to the duration of twelve months towards the preparatory service, and a preparatory service in accordance with section 5b of

the German Judiciary Act (*Deutsches Richtergesetz*) may be counted up to the duration of six months towards the preparatory service. Sentence 1 shall be applied mutatis mutandis to participants in training in accordance with section 5b of the German Judiciary Act in the version of the Act of 10 September 1971 (Federal Law Gazette [BGBl.] Part I p. 1557).

(5) Trainee jurists (*Referendare*) may be assigned to carry out the tasks of a senior judicial officer on a temporary basis.

(6) The *Länder* shall issue the detailed provisions.

(7) The Professional Qualifications Assessment Act (*Berufsqualifikationsfeststellungsgesetz*) shall not be applied.

### **Section 3** **Assigned tasks**

The following tasks shall be assigned to the senior judicial officer:

1. all of the tasks of the Local Court to be carried out by the judge in accordance with the statutory provisions in
  - a) cases related to associations in accordance with sections 29, 37 and 55 to 79 of the Civil Code (*Bürgerliches Gesetzbuch*), as well as in accordance with Book 5 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*),
  - b) further matters of non-contentious jurisdiction in accordance with section 410 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction, as well as proceedings in accordance with section 84 subs. 2, section 189 of the Insurance Contract Act (*Versicherungsvertragsgesetz*),
  - c) public notice procedures in accordance with Book 8 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,
  - d) cases related to credits for leaseholders within the meaning of the Leaseholder Credit Act (*Pachtkreditgesetz*),
  - e) (deleted)
  - f) cases concerned with official records, including acceptance of the declaration,
  - g) missing persons cases,
  - h) land register cases, register of ships and register of ships under construction cases, as well as cases of the register for liens in aircraft,
  - i) proceedings in accordance with the Act on Forced Sale and Sequestration (*Gesetz über die Zwangsversteigerung und die Zwangsverwaltung*),
  - k) proceedings for the distribution of the proceeds of a public auction which are to be implemented outside compulsory execution in accordance with the provisions of the Code of Civil Procedure (*Zivilprozessordnung*) regarding the proceedings for distribution of the proceeds of a public auction,
  - l) proceedings for the distribution of the proceeds of a public auction which are to be implemented outside forced sale in accordance with the provisions which are applicable to the distribution of the proceeds in the case of a forced sale,
  - m) proceedings for distribution of the proceeds of a public auction in accordance with section 75 subs. 2 of the *Land* Reallocation Act (*Flurbereinigungsgesetz*), section 54 subs. 3 of the Acquisition of Land (for

Military Purposes) Act (*Landbeschaffungsgesetz*), section 119 subs. 3 of the Federal Construction Code (*Baugesetzbuch*) and section 94 subs. 4 of the Federal Mining Act (*Bundesberggesetz*),

n) cases related to the commercial register, the register of cooperative societies, and the partnerships register, in accordance with section 374 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction;

2. subject to the exceptions listed in sections 14 to 19b of this Act, the tasks of the Local Court to be carried out by the judge in accordance with the statutory provisions

a) parent and child cases and adoption cases, as well as corresponding life partnership cases in accordance with the sections 151, 186 and 269 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,

b) custodianship cases, as well as custodianship court assignment cases in accordance with sections 271 and 340 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,

c) inheritance and partitioning cases in accordance with section 342 subs. 1 and 2 No. 2 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,

d) cases concerned with the commercial register, as well as proceedings under company law in accordance with sections 374 and 375 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,

e) proceedings in accordance with the Insolvency Statute (*Insolvenzordnung*),

f) (repealed)

g) proceedings in accordance with Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160 of 30 June 2000 p. 1; L 350 of 6 December 2014, p. 15), most recently amended by Implementing Regulation (EU) 2016/1792 (OJ L 274 of 11 October 2016, p. 35), proceedings in accordance with Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141 of 5 June 2015, p. 19; L 349 of 21 December 2016, p. 6), most recently amended by Regulation (EU) 2017/353 (OJ L 57 of 3 March 2017, p. 19), proceedings in accordance with Articles 102 and 102c of the Introductory Act to the Insolvency Statute, as well as proceedings in accordance with the Implementing Act to the German-Austrian Bankruptcy Agreement (*Ausführungsgesetz zum deutsch-österreichischen Konkursvertrag*) of 8 March 1985 (Federal Law Gazette Part I p. 535),

h) proceedings in accordance with the Maritime Distribution Statute (*Schiffahrtsrechtliche Verteilungsordnung*),

i) proceedings in accordance with section 33 of the International Inheritance Law Procedure Act (*Internationales Erbrechtsverfahrensgesetz*) of 29 June 2015 (Federal Law Gazette Part I p. 1042) regarding the issuance, rectification, amendment or withdrawal of a European Certificate of Succession, regarding the issuance of a certified copy of a European Certificate of Succession or the extension of the period of validity of a certified copy, and regarding the suspension of the effects of a European Certificate of Succession;

3. the tasks individually listed in sections 20 to 24a, 25 and 25a of this Act
  - a) in proceedings in accordance with the Code of Civil Procedure,
  - b) in declaratory proceedings,
  - c) of the court in criminal and regulatory fines proceedings,
  - d) in proceedings before the Federal Patent Court,
  - e) in the field of the recording of declarations,
  - f) in the field of legal advice aid,
  - g) in the field of family cases,
  - h) in proceedings on legal aid in accordance with the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction;
4. the tasks individually listed in sections 29 and 31 of this Act
  - a) in international legal transactions,
  - b) (repealed)
  - c) of the criminal prosecution office in criminal proceedings and of execution in criminal and regulatory fine cases, as well as of measures to maintain public order and means of coercion.

#### **Section 4** **Scope of assignment**

- (1) The senior judicial officer shall carry out all measures required to carry out the tasks assigned to him/her.
- (2) The senior judicial officer shall not be entitled
  1. to order an oath to be sworn or to administer an oath,
  2. to threaten or order deprivations of liberty unless these are measures for the execution
    - a) of a prison sentence in accordance with section 457 of the Code of Criminal Procedure (*Strafprozeßordnung*) or of confinement for contempt of court in accordance with section 890 the Code of Civil Procedure,
    - b) of a measure of rehabilitation and security in accordance with section 463 of the Code of Criminal Procedure, or
    - c) of imprisonment for the purposes of enforcement in accordance with section 97 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*).
- (3) If the senior judicial officer considers measures to be required which he/she is not entitled to carry out in accordance with subs. 2 Nos. 1 and 2, he/she shall therefore submit the case to the judge for a ruling.

#### **Section 5** **Submission to the judge**

- (1) The senior judicial officer shall submit to the judge tasks which have been assigned to him/her if
  1. it emerges when processing the case that a ruling of the Federal Constitutional Court or of a court of a *Land* which has jurisdiction for constitutional disputes is to be requested in accordance with Article 100 of the Basic Law (*Grundgesetz*);

2. there is such a close connection between the assigned task and a task to be carried out by the judge that it is not expedient for them to be dealt with separately.

(2) The senior judicial officer may submit tasks which have been assigned to him/her to the judge if the application of foreign law can be considered.

(3) The cases which have been submitted shall be dealt with by the judge insofar as he/she considers it to be necessary. He/she may return the cases to the senior judicial officer. If the judge returns a case to the senior judicial officer, the latter shall be bound by a legal view stated by the judge.

## **Section 6**

### **Processing of assigned cases by the judge**

If an assigned task is so closely connected with a task to be performed by the judge that it would not be expedient for them to be processed separately, the judge should deal with the entire matter.

## **Section 7**

### **Determination of the competent body of judicial administration**

In the event of a dispute or of uncertainty regarding whether a task is to be dealt with by the judge or the senior judicial officer, the judge shall decide on competence by issuing an order. The order shall not be challengeable.

## **Section 8**

### **Validity of tasks**

(1) If the judge has performed a task which has been assigned to the senior judicial officer, the effectiveness of the task shall remain unaffected thereby.

(2) If the senior judicial officer has carried out a task which may be assigned to him/her by the judge in accordance with this Act, the task shall not be ineffective because the assignment did not take place or the prerequisites for the assignment in the individual case were not met.

(3) A task shall not be ineffective because the senior judicial officer did not submit it to the judge in contravention of section 5 subs. 1.

(4) If the senior judicial officer has performed a task of the judge which in accordance with this Act has neither been assigned to him/her nor can be assigned to him/her, the task shall be ineffective.

This shall not apply if the task had been assigned to the senior judicial officer by a ruling in accordance with section 7.

(5) If the senior judicial officer has performed a task of the clerk of the registry, the effectiveness of the task shall remain unaffected thereby.

## **Section 9**

### **Freedom of the senior judicial officer from instructions**

The senior judicial officer shall be factually independent and bound only by law and order.

## **Section 10**

### **Preclusion and rejection of the senior judicial officer**

The provisions applicable to the judge shall be applied mutatis mutandis to the preclusion and rejection of the senior judicial officer. The judge shall decide on the rejection of the senior judicial officer.

## **Section 11**

### **Appeals**

(1) An appeal shall be available against decisions of the senior judicial officer which shall be admissible in accordance with the general rules of procedure.

(2) If no appeal may be lodged against the ruling in accordance with the general procedural regulations, a reminder shall be issued, which shall be submitted within a period of two weeks. If the party lodging the reminder has failed to comply with the period without blame,

he/she shall be restored to the status quo ante on request if he/she lodges the reminder within two weeks of remedying the obstacle and makes a plausible case with regard to the facts which give rise to the restoration. A lack of blame shall be presumed if no notice, or an incorrect notice, has been given with regard to the appeal. Restoration may no longer be applied for after expiry of one year, counted from the end of the deadline that has been missed. The senior judicial officer may remedy the reminder. He/she shall submit those reminders which he/she does not remedy to the judge for a ruling. The provisions of the Code of Civil Procedure shall apply mutatis mutandis to the reminder in other respects.

(3) Court rulings, orders or certifications which have become effective in accordance with the provisions of the *Land Register Code (Grundbuchordnung)*, of the Code of the Register of Ships (*Schiffsregisterordnung*), or of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction, and which can no longer be amended, shall not be contestable with a reminder. The reminder shall be further ruled out in cases falling under sections 694 and 700 of the Code of Civil Procedure and against the rulings on granting a right to vote (section 77 of the Insolvency Statute).

(4) No court fees shall be charged for the reminder proceedings.

## **Section 12**

### **Designation of the senior judicial officer**

The senior judicial officer shall add the word "*Rechtspfleger*" ("senior judicial officer") to his/her signature in correspondence and when recording certificates in assigned matters.

## **Section 13**

### **Exclusion of mandatory representation by counsel**

Section 78 subs. 1 of the Code of Civil Procedure and section 114 subs. 1 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction shall not apply to proceedings before the senior judicial officer.

## **Division 2**

### **Tasks reserved to the judge in family cases and in the field of non-contentious jurisdiction, as well as in insolvency proceedings and proceedings under maritime law for the distribution of the proceeds of a public auction**

## **Section 14**

### **Parent and child cases and adoption cases**

(1) Of the matters in parent and child and adoption cases assigned to the family court, and of the corresponding life partnership cases, the following shall be reserved to the judge:

1. proceedings which have as their subject-matter the establishment of the existence or non-existence of parental custody of one party for the other;
2. the measures on the basis of section 1666 of the Civil Code to avert danger to the physical, mental or emotional best interest of the child;
3. the assignment of parental custody in accordance with sections 1626a, 1671, 1678 subs. 2, section 1680 subs. 2 and 3, as well as section 1681 subs. 1 and 2 of the Civil Code;
4. the ruling on the transfer of matters of parental custody to the foster carer in accordance with section 1630 subs. 3 of the Civil Code;
5. the ruling on differences of opinion between the persons with parental custody;
6. authorisation of accommodation involving deprivation of liberty, or of a measure involving deprivation of liberty in accordance with section 1631b of the Civil Code, and authorisation of consent in accordance with section 1631e subs. 3 of the Civil Code;



7. the arrangement of personal contact between parents and children, as well as between children and third parties, in accordance with section 1684 subs. 3 and 4, section 1685 subs. 3 and section 1686a subs. 2 of the Civil Code, the ruling on the restriction or the exclusion of the right to decide alone in matters of daily life in accordance with sections 1687 and 1687a of the Civil Code, as well as on disputes related to a matter in accordance with section 1632 subs. 2 of the Civil Code;
  8. the decision on the right to surrender of a child in accordance with section 1632 subs. 1 of the Civil Code, as well as the decision that the child remains with the foster carer in accordance with section 1632 subs. 4 or with the spouse, life partner or a person entitled to contact in accordance with section 1682 of the Civil Code;
  9. the ordering of custodianship or curatorship on the basis of provisions of service law insofar as the family court has jurisdiction therefor;
  10. (deleted);
  11. the measures concerned with the religious education of children in accordance with sections 2, 3 and 7 of the Act on the Religious Education of Children (*Gesetz über die religiöse Kindererziehung*);
  12. substitution of the consent
    - a) of a person with parental custody to a legal transaction,
    - b) of a statutory representative to the declaration of parental custody of a parent with limited capacity to contract in accordance with section 1626c subs. 2 sentence 1 of the Civil Code;
  13. the activities named in the Youth Courts Act (*Jugendgerichtsgesetz*), with the exception of the appointment of a curator in accordance with section 67 subs. 4 sentence 3 of the Youth Courts Act;
  14. the substitution of the consent to or the approval of adoption of a child in accordance with section 1746 subs. 3, as well as in accordance with sections 1748 and 1749 subs. 1 of the Civil Code, the ruling on adoption of a child, including the ruling on the name of the child in accordance with sections 1752, 1768 and 1757 subs. 3 of the Civil Code, the cancellation of the adoption relationship in accordance with sections 1760, 1763 and 1771 of the Civil Code, as well as decisions in accordance with section 1751 subs. 3, section 1764 subs. 4, section 1765 subs. 2 of the Civil Code and in accordance with the Act on the Effect of Adoptions (*Adoptionswirkungsgesetz*) of 5 November 2001 (Federal Law Gazette Part I pp. 2950 and 2953) insofar as they contain a judicial ruling;
  15. exemption from the prohibition to marry if adoption has created a collateral relationship in accordance with section 1308 subs. 2 of the Civil Code;
  16. approval of the petition for divorce or dissolution of marriage or for dissolution of the life partnership by the statutory representative of a spouse or life partner who is not capable of contracting in accordance with section 125 subs. 2 sentence 2 and section 270 subs. 1 sentence 1 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction.
- (2) Insofar as the measures and orders in accordance with sections 10 to 15, 20, 21, 32 to 35, 38 to 41, 44 to 44c, 44f, 44h, 44j, and 47 to 50, of the International Family Law Procedure Act (*Internationales Familienrechtsverfahrensgesetz*) are incumbent on the family court, they shall remain reserved to the judge.

## **Section 15**

### **Custodianship cases and custodianship court assignment cases**

(1) Of those matters which are assigned to the custodianship court, the following shall remain reserved to the judge:

1. activities on the basis of sections 1814 to 1816, 1817 subs. 1 to 4, sections 1818, 1819, 1820 subs. 3 to 5, and section 1868 subs 1 to 4 and 7, of the Civil Code, as well as the subsequent appointment of a new custodian;
2. the appointment of a new custodian in the case of the death of the custodian in accordance with section 1869 of the Civil Code;
3. activities on the basis of section 1871 of the Civil Code and of section 291 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction;
4. activities on the basis of sections 1825, 1829 and 1830 of the Civil Code;
5. (deleted)
6. the ordering of custodianship or curatorship on the basis of provisions of civil service law;
7. the decision in accordance with section 1834 of the Civil Code;
8. authorisation in accordance with section 6 of the Act on Voluntary Castration and other Treatment Methods (*Gesetz über die freiwillige Kastration und andere Behandlungsmethoden*);
9. authorisation in accordance with section 3 subs. 1 sentence 2, as well as in accordance with section 6 subs. 2 sentence 1, section 7 subs. 3 sentence 2 and section 9 subs. 3 sentence 1, in each case in conjunction with section 3 subs. 1 sentence 2 of the Act on Changes of Forenames and Determination of Sexual Affiliation in Special Cases (*Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen*);
10. approval of the petition for divorce or dissolution of marriage or for dissolution of the life partnership by the statutory representative of a spouse or life partner who is not capable of contracting in accordance with section 125 subs. 2 sentence 2 and section 270 subs. 1 sentence 1 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction.

(2) The measures and orders in accordance with sections 6 to 12 of the Act Implementing the Convention on the Protection of Adults (*Erwachsenenschutzübereinkommens-Ausführungsgesetz*) of 17 March 2007 (Federal Law Gazette Part I p. 314) shall remain reserved to the judge.

## **Section 16**

### **Inheritance and distribution cases; European Certificate of Succession**

(1) The following shall remain reserved to the judge in inheritance and distribution cases:

1. the tasks of the inheritance court which became necessary with provisional administration of estate or administration of estate insofar as they correspond to the tasks in parent and child cases that are ruled out from assignment in accordance with section 14 of this Act;
2. the nomination of executors (section 2200 of the Civil Code);
3. the ruling on applications to cancel an order made by the testator for the administration of the estate by testamentary disposition (section 2216 subs. 2 sentence 2 of the Civil Code);



4. the ruling on differences of opinion between several executors (section 2224 of the Civil Code);
5. the dismissal of an executor if a compelling reason exists (section 2227 of the Civil Code);
6. the issuance of certificates of inheritance (section 2353 of the Civil Code), as well as of certificates in accordance with sections 36 and 37 of the *Land* Register Code or sections 42 and 74 of the Code on the Register of Ships, insofar as a testamentary disposition has been made, or the application of foreign law can be considered, further the issuance of certificates of inheritance (section 2368 of the Civil Code);
7. the withdrawal of certificates of inheritance (section 2361 of the Civil Code) and of other certificates in accordance with sections 36 and 37 of the *Land* Register Code and sections 42 and 74 of the Code on the Register of Ships if the certificates of inheritance or other certificates have been issued by the judge or are to be withdrawn because of a testamentary disposition, and further the withdrawal of certificates of inheritance (section 2368 of the Civil Code) and of certificates on continuation of community of property (section 1507 of the Civil Code).

(2) In proceedings regarding the European Certificate of Succession, the issuance, rectification, amendment or withdrawal of a European Certificate of Succession (section 33 No. 1 of the International Inheritance Law Procedure Act), as well as the suspension of the effects of a European Certificate of Succession (section 33 No. 3 of the International Inheritance Law Procedure Act) shall remain reserved to the judge if there is a testamentary disposition or the application of foreign law may be considered.

(3) If, despite the fact that there is a testamentary disposition, the rules of intestate succession are material, and German inheritance law is applicable, the judge may assign the following matters to the senior judicial officer:

1. the award of a certificate of inheritance;
2. the issuance of a European Certificate of Succession;
3. the award of a certificate in accordance with sections 36 and 37 of the *Land* Register Code or with sections 42 and 74 of the Code on the Register of Ships.

The senior judicial officer shall be bound by the view of the judge notified to him/her.

## **Section 17**

### **Register cases and proceedings under company law**

The following shall remain reserved to the judge in cases concerned with the commercial register, as well as in proceedings under company law in accordance with Book 5 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,

1. with public limited companies, partnerships limited by shares, limited liability companies and mutual insurance associations, the following orders at the court of the seat of business and, if it is a company headquartered abroad, at the court of the branch office:
  - a) for the initial registration,
  - b) for the registration of amendments to the statutes which concern not only the version,
  - c) for the registration of incorporation or change of the corporate form,
  - d) for the registration of the existence, amendment or termination of a company-transfer agreement,

- e) for deletion from the commercial register in accordance with sections 394, 395, 397 and 398 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction and in accordance with section 6 subs. 4 sentence 1 of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*),
  - f) orders in accordance with section 399 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction;
2. the tasks to be performed in accordance with section 375 Nos. 1 to 6, 9, 14 and 16 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction, with the exception of the tasks regulated in:
- a) section 145 subs. 1, section 152 subs. 1 of the Commercial Code (*Handelsgesetzbuch*),
  - b) section 264 subs. 2, section 273 subs. 4 and section 290 subs. 3 of the Share Capital Companies and Partnerships Act (*Aktiengesetz*),
  - c) section 66 subs. 2 and 3 and section 74 subs. 2 and 3 of the Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*).

## **Section 18**

### **Insolvency proceedings**

(1) The following shall remain reserved to the judge in the proceedings in accordance with the Insolvency Statute:

- 1. the proceedings until the decision is taken on the opening application, including this decision and the nomination of the insolvency administrator, as well as the proceedings on a plan for the settlement of debts in accordance with sections 305 to 310 of the Insolvency Statute,
- 2. the proceedings on an insolvency plan in accordance with sections 217 to 256 and sections 258 to 269 of the Insolvency Statute,
- 3. the decision on the establishment of group jurisdiction in accordance with section 3a subs. 1 of the Insolvency Statute, the decision on the request for referral to the court of group jurisdiction in accordance with section 3d subs. 1 of the Insolvency Statute, as well as the coordination procedure in accordance with sections 269d to 269i of the Insolvency Statute,
- 4. in case of an application by the debtor to issue discharge of residual debt, the decisions in accordance with sections 287a, 290, 296 to 297a and 300 of the Insolvency Statute if an insolvency creditor applies to refuse to grant discharge of residual debt, as well as the decision on the retraction of discharge of residual debt in accordance with section 303 of the Insolvency Statute,
- 5. rulings in accordance with sections 344 to 346 of the Insolvency Statute.

(2) The judge may reserve the insolvency proceedings entirely or partly if he/she considers this to be required. If he/she no longer considers the reservation to be necessary, he/she may assign the proceedings to the senior judicial officer. He/she may also reassign the proceedings to him/herself after the assignment, if and as long as he/she considers this to be required.

(3) If the decision of the senior judicial officer on the granting of the right to vote in accordance with section 77 of the Insolvency Statute has affected the outcome of a ballot, the judge may redefine the voting right and order the ballot to be repeated when requested by a creditor or by the insolvency administrator; the request may only be filed until the end of the hearing at which the ballot takes place.

(4) A civil servant on probation may not carry out tasks of the senior judicial officer in insolvency cases in the first year after his/her appointment. Senior judicial officers in insolvency cases should have demonstrable knowledge of insolvency law and basic knowledge of commercial and company law and of the parts of labour, social and fiscal law and accounting necessary for insolvency proceedings. A senior judicial officer whose knowledge in these fields is not demonstrated may only be assigned the tasks of a senior judicial officer in insolvency cases if it can be anticipated that he/she will acquire such knowledge soon.

### **Section 19** **Rescission of judicial reserves**

(1) The *Land* governments shall be empowered to fully or partly rescind the judicial reserves determined in the above provisions by means of a statutory instrument insofar as they relate to the following matters:

1. the tasks in accordance with section 14 subs. 1 No. 9, as well as section 15 subs. 1 Nos. 1 to 6, insofar as they relate to the decision on the ordering of custodianship and to the ascertainment of the group of tasks incumbent on the custodian on the basis of sections 1814, 1815 and 1820 subs. 3 of the Civil Code, as well as the tasks on the basis of section 1820 subs. 4 and 5, sections 1825, 1829 and 1830, as well as 1871, of the Civil Code and of section 278 subs. 5 and section 283 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction;
2. the tasks in accordance with section 16 subs. 1 No. 1, insofar as they correspond to the tasks ruled out in accordance with section 14 subs. 1 Nos. 9 of this Act in parent and child cases;
3. the tasks in accordance with section 16 subs. 1 No. 2;
4. the tasks in accordance with section 16 subs. 1 No. 5 unless the deceased has designated the executor personally or has determined a third party to designate him/her;
5. the tasks in accordance with section 16 subs. 1 Nos. 6 and 7, as well as subs. 2;
6. the tasks in accordance with section 17 No. 1 insofar as they do not relate to the assessment and decision in accordance with section 316 subs. 3, where appropriate in conjunction with section 329, first sentence, and section 343 subs 3, of the Transformation Act (*Umwandlungsgesetz*).

The *Land* Governments may assign the empowerment to the *Land* departments of justice.

(2) The instrument in accordance with subs. 1 shall provide that the senior judicial officer must submit the proceedings to the judge for further processing insofar as, in the tasks in accordance with subs. 1 sentence 1 Nos. 2 to 5, objections are submitted to the issuance of the requested decision.

(3) Insofar as use is made of the empowerment in accordance with subs. 1 No. 1 as to the selection and appointment of a curator, the provisions of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction regarding the appointment of a custodian shall also be applied to the ordering of custodianship and determining the group of tasks of the custodian in accordance with sections 1814 and 1815 of the Civil Code.

### **Section 19a** **Proceedings in accordance with international insolvency law**

(1) The following shall remain reserved to the judge in proceedings in accordance with Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ EC No. L 160 p. 1) and in accordance with Article 102 of the Introductory Act to the Insolvency Statute:

1. the discontinuation of insolvency proceedings in favour of the courts of another Member State in accordance with Article 102 para. 4 of the Introductory Act to the Insolvency Statute,
2. the ordering of measures to secure and preserve assets in accordance with Article 38 of Regulation (EC) No 1346/2000.

(2) The following shall remain reserved to the judge in the proceedings in accordance with the Implementing Act to the German-Austrian Bankruptcy Agreement of 8 March 1985 (Federal Law Gazette Part I p. 535):

1. discontinuation of proceedings in favour of the Austrian courts (sections 3 and 24 of the Implementing Act),
2. the appointment of a special bankruptcy or special settlement administrator if the bankruptcy or settlement administrator has been appointed by the judge (sections 4 and 24 of the Implementing Act),
3. the ordering of coercive measures including detention (section 11, 15 and 24 of the Implementing Act),
4. the decision on the interception of mail (sections 17 and 24 of the Implementing Act).

(3) In proceedings in accordance with Regulation (EU) 2015/848 and with Article 102c of the Introductory Act to the Insolvency Statute, the following shall remain reserved to the judge:

1. ruling on the continuation of insolvency proceedings as secondary insolvency proceedings in accordance with Article 102c section 2 subs. 1 sentence 2 of the Introductory Act to the Insolvency Statute,
2. discontinuation of insolvency proceedings in favour of another Member State in accordance with Article 102c section 2 subs. 1 sentence 2 of the Introductory Act to the Insolvency Statute,
3. ruling on the right to vote in accordance with Article 102c section 18 subs. 1 sentence 2 of the Introductory Act to the Insolvency Statute,
4. ruling on appeals and applications in accordance with Article 102c section 21 of the Introductory Act to the Insolvency Statute,
5. ordering preservation measures in accordance with Article 52 of Regulation (EU) 2015/848,
6. competence for the group coordination proceedings in accordance with Chapter V Section 2 of Regulation (EU) 2015/848.

## **Section 19b**

### **Proceedings under maritime law for distribution**

(1) The following shall remain reserved to the judge in proceedings in accordance with the Maritime Distribution Statute:

1. the proceedings until the decision is taken on the opening application, including this decision and the nomination of the custodian;
2. the decision that and in what manner a security which has become insufficient in the course of the proceedings is to be supplemented or another security is to be paid (section 6 subs. 5 of the Maritime Distribution Statute);
3. the decision on the expansion of the proceedings to include claims for personal injury (sections 16, 30 and 44 of the Maritime Distribution Statute);

4. the ruling on the admission of compulsory execution in accordance with section 17 subs. 4 of the Maritime Distribution Statute;

5. the order to retain portions in the distribution in accordance with section 26 subs. 5 of the Maritime Distribution Statute.

(2) The judge may fully or partly reserve the proceedings for distribution if he/she considers this to be required. If he/she no longer considers the reservation to be required, he/she may assign the proceedings to the senior judicial officer. Also after assignment, he/she may reassign the proceedings back to him/herself if and so long as he/she considers this to be necessary.

### **Division 3**

#### **Tasks assigned to the senior judicial officer in accordance with section 3 No. 3**

### **Section 20**

#### **Civil legal disputes**

The following tasks in proceedings in accordance with the Code of Civil Procedure shall be assigned to the senior judicial officer:

1. the payment order proceedings within the meaning of the Seventh Book of the Code of Civil Procedure, including the determination of the objection period in accordance with section 700 subs. 1 in conjunction with section 339 subs. 2 and 3 of the Code of Civil Procedure, as well as the transfer to the court designated as having jurisdiction for the contentious proceedings, also insofar as the payment order proceedings are processed automatically; however, the contentious proceedings shall remain reserved to the judge;
2. (repealed)
3. the decisions to be taken on refunding securities in accordance with sections 109 and 715 of the Code of Civil Procedure;
4. in the proceedings on legal aid
  - a) the measures designated in section 118 subs. 2 of the Code of Civil Procedure, including the certification of settlements in accordance with section 118 subs. 1 second half of sentence 3 if the presiding judge assigns this to the senior judicial officer;
  - b) the determination of the time for discontinuation and a resumption of the payments in accordance with section 120 subs. 3 of the Code of Civil Procedure;
  - c) the alteration and the rescission of the approval of legal aid in accordance with sections 120a, 124 subs. 1 Nos. 2 to 5 of the Code of Civil Procedure;
5. the proceedings on the granting of legal aid in cases in which outside or after conclusion of court proceedings the approval of legal aid is applied for only for compulsory execution; however, the proceedings on the approval of legal aid shall remain reserved to the judge in cases in which execution is incumbent on the trial court or in which legal aid is applied for in order to take legal action or mount a legal defence, thereby requiring another judicial act;
6. in the proceedings on cross-border legal aid within the European Union, the measures designated in section 1077 of the Code of Civil Procedure, as well as the decisions incumbent on the execution court in accordance with section 1078 of the Code of Civil Procedure; if legal aid is applied for in legal action or in mounting a legal defence which requires a judicial act, the decision shall remain reserved to the judge in accordance with section 1078 of the Code of Civil Procedure;

- 6a. the decisions in accordance with section 22 subs. 3 of the Act for the Recovery of Maintenance in Relations with Foreign States of 23 May 2011 (Federal Law Gazette Part I p. 898);
7. the European order for payment procedure within the meaning of Division 5 of the Eleventh Book of the Code of Civil Procedure, including transferring them to the court designated to as having jurisdiction for the contentious proceedings, also where the European order for payment procedure is processed automatically; however, the review of the European payment order and the contentious proceedings shall remain reserved to the judge;
8. the issuance of certificates in accordance with Article 13 para. 1 (e) and para. 3 of the Hague Convention of 30 June 2005 on Choice of Court Agreements;
9. the issuance of certificates in accordance with Article 12 para. 1 (d) and para. 3 of the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters;
10. the preparation of an extract in accordance with Article 20 para. 1 (b) of Council Regulation No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;
11. the issuance, correction and revocation of confirmation in accordance with sections 1079 to 1081 of the Code of Civil Procedure, the issuance of confirmation in accordance with section 1106 of the Code of Civil Procedure, as well as the issuance of a certificate in accordance with section 1110 of the Code of Civil Procedure, and the issuance of a certificate in accordance with Article 45 para. 3 (b), Article 59 para. 2 and Article 60 para. 2 of Regulation (EU) 2016/1103, or with Article 45 para. 3 (b), Article 59 para. 2 and Article 60 para. 2 of Regulation (EU) 2016/1104;
12. the issuance of the enforceable copies in cases falling under section 726 subs. 1, sections 727 to 729, 733, 738, 742, 744, 745 subs. 2, as well as section 749, of the Code of Civil Procedure;
13. the issuance of further enforceable copies of court documents and the decision on the application to issue further enforceable copies of notarial documents in accordance with section 797 subs. 2 No. 2(c) of the Code of Civil Procedure and the decision on the issuance of further enforceable copies in accordance with section 60 sentence 3 No. 2 of the Eighth Book of the Social Code;
14. the order that the party which has had an arrest warrant or an injunction issued has to lodge an action within a period which is to be determined (section 926 subs. 1 and section 936 of the Code of Civil Procedure);
15. the decision on applications to rescind a seizure that has been enforced on deposit of the amount of money determined in the writ of seizure (section 934 subs. 1 of the Code of Civil Procedure);
16. the attachment of receivables, as well as the ordering of the attachment of registered ships or ships under construction from a writ of seizure unless the writ of seizure at the same time contains the attachment order or the ordering of attachment;
- 16a. the ordering that the article be auctioned off and the proceeds be deposited, in accordance with section 21 of the Recognition and Execution Implementation Act (*Anerkennungs- und Vollstreckungsausführungsgesetz*) of 19 February 2001 (Federal Law Gazette Part I pp. 288 and 436), in accordance with section 51 of the Act for the Recovery of Maintenance in Relations with Foreign States of 23 May 2011 (Federal Law



Gazette Part I p. 898), in accordance with section 17 of the International Inheritance Law Procedure Act and with section 17 of the International Matrimonial Property Act (*Internationales Güterrechtsverfahrensgesetz*);

17. the tasks to be carried out in compulsory execution proceedings in accordance with the Eighth Book of the Code of Civil Procedure

- a) by the execution court, or by a court requested by the latter,
- b) by another Local Court in cases falling under sections 848, 854 and 855 of the Code of Civil Procedure, or
- c) by the distribution court (in accordance with section 873 of the Code of Civil Procedure),

subject to the proviso that rulings in accordance with section 766 of the Code of Civil Procedure, as well as with Article 34 para. 1 (b) and para. 2 of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189 of 27 June 2014, p. 59) shall remain reserved to the judge.

(2) The *Land* governments are herewith empowered to determine by means of a statutory instrument that the verification of the personal and economic circumstances in accordance with sections 114 to 116 of the Code of Civil Procedure, including the measures designated in section 118 subs. 2 of the Code of Civil Procedure, the certification of settlements in accordance with section 118 subs. 1 sentence 3 of the Code of Civil Procedure and of rulings in accordance with section 118 subs. 2 sentence 4 of the Code of Civil Procedure, is to be carried out by the senior judicial officer if the presiding judge assigns the proceedings to the senior judicial officer in this regard. In this case, section 5 subs. 1 No. 2 shall not be applied. If the preconditions for the approval of legal aid do not accordingly apply, the senior judicial officer shall take the decision rejecting the application; otherwise, the senior judicial officer shall note in the procedural files that the applicant can be granted legal aid in accordance with his/her personal and economic circumstances and in what amount any appropriate monthly instalments or amounts from the assets are to be paid.

(3) The *Land* governments may assign the empowerment in accordance with subs. 2 to the *Land* departments of justice.

## **Section 21**

### **Declaratory proceedings**

The following tasks shall be assigned to the senior judicial officer in the declaratory proceedings:

- 1. the determination of the costs in cases in which sections 103 et seqq. of the Code of Civil Procedure are to be applied;
- 2. the determination of the remuneration of the lawyer in accordance with section 11 of the Lawyers' Remuneration Act (*Rechtsanwaltsvergütungsgesetz*);
- 3. the determination of the court costs in accordance with the statutes and instruments on the implementation of treaties with foreign states on mutual assistance, as well as the recognition and execution of court rulings and of other instruments of indebtedness in civil and commercial cases.

## **Section 22**

### **Court tasks in criminal and regulatory fines proceedings**

Of the court tasks in criminal and regulatory fines proceedings, the decision on applications for a declaratory judgment in accordance with section 52 subs. 2 and section 53 subs. 3 of the Lawyers' Remuneration Act shall be assigned to the senior judicial officer.

## Section 23

### Proceedings before the Federal Patent Court

(1) The following tasks shall be assigned to the senior judicial officer in proceedings before the Federal Patent Court:

1. the decisions to be taken in accordance with sections 109 and 715 of the Code of Civil Procedure in conjunction with section 99 subs. 1 of the Patent Act in the refund of securities in cases falling under section 81 subs. 6 and section 85 subs. 2 and 6 of the Patent Act, as well as section 20 of the Design Model Act;
2. with legal aid (sections 129 to 137 of the Patent Act, section 21 subs. 2 of the Utility Models Act [*Gebrauchsmustergesetz*], section 81a subs. 2 of the Trademark Act [*Markengesetz*], section 24 of the Design Act [*Designgesetz*], section 11 of the Semiconductor Protection Act [*Halbleiterschutzgesetz*], and section 36 of the Plant Variety Rights Act [*Sortenschutzgesetz*]), the measures designated in section 20 subs. 1 No. 4;
3. (repealed)
4. the announcement that an action, an application for an injunction, an application for a court ruling in objection proceedings, as well as a complaint, is not deemed to have been lodged (section 6 subs. 2 of the Patent Cost Act [*Patentkostengesetz*]) or an action in accordance with section 81 subs. 6 sentence 3 of the Patent Act is deemed to have been withdrawn;
5. the determination of a period for subsequently submitting the written proxy (section 97 subs. 2 sentence 2 of the Patent Act, section 18 subs. 2 of the Utility Models Act, section 4 subs. 4 sentence 3 of the Semiconductor Protection Act, section 81 subs. 2 sentence 3 of the Trademark Act [*Markengesetz*] and section 23 subs. 4 sentence 4 of the Design Act);
6. the order to submit original documents, duplicates or certified duplicates of printed matter which are not available in the German Patent and Trade Mark Office and in the Federal Patent Court (section 125 subs. 1 of the Patent Act, section 18 subs. 2 of the Utility Models Act and section 4 subs. 4 sentence 3 of the Semiconductor Protection Act);
7. the instruction to designate a representative in accordance with section 25 of the Patent Act, section 28 of the Utility Models Act, section 11 subs. 2 of the Semiconductor Protection Act, section 96 of the Trademark Act and section 58 of the Design Act;
8. (repealed)
9. the issuance of the executable copies in cases falling under section 20 subs. 1 No. 12 of the present Act in conjunction with section 99 subs. 1 of the Patent Act, section 18 subs. 2 of the Utility Models Act, section 4 subs. 4 sentence 3 of the Semiconductor Protection Act, section 82 subs. 1 of the Trademark Act and section 23 subs. 2 sentence 4 of the Design Act;
10. the issuance of further executable copies of court certificates in accordance with section 797 subs. 2 No. 1 of the Code of Civil Procedure in conjunction with section 99 subs. 1 of the Patent Act, section 18 subs. 2 of the Utility Models Act, section 4 subs. 4 sentence 3 of the Semiconductor Protection Act, section 82 subs. 1 of the Trademark Act and section 23 subs. 2 sentence 4 of the Design Act;
11. the decision on applications to grant inspection of files to third parties if no person concerned lodges objections and these are not files of patent applications, patents, utility model applications, utility models, topography applications or registered

topographies for which no disclosure whatsoever is made (sections 50 and 99 subs. 3 of the Patent Act, sections 9 and 18 subs. 2 of the Utility Models Act, section 4 subs. 4 sentence 3 of the Semiconductor Protection Act, section 82 subs. 3 of the Trademark Act and section 23 subs. 2 sentence 4 of the Design Act);

12. the determination of the costs in accordance with sections 103 et seqq. of the Code of Civil Procedure in conjunction with section 80 subs. 5, section 84 subs. 2 sentence 2, section 99 subs. 1, section 109 subs. 3 of the Patent Act, section 18 subs. 2 of the Utility Models Act, section 4 subs. 4 sentence 3 of the Semiconductor Protection Act, section 71 subs. 5, section 82 subs. 1, section 90 subs. 4 of the Trademark Act and section 23 subs. 4 and 5 of the Design Act;

13. the issuance of the executable copies in cases falling under section 125a of the Trademark Act and section 64 of the Design Act.

(2) A reminder shall be admissible against the decisions of the senior judicial officer in accordance with subs. 1. It shall be lodged within a period of two weeks. Section 11 subs. 1 and 2 sentence 1 shall not be applicable.

#### **Section 24** **Recording of declarations**

(1) The following tasks of the registry shall be assigned to the senior judicial officer:

1. the recording of declarations regarding the submission and reasoning
  - a) of legal complaints and further complaints,
  - b) of an appeal on points of law in criminal cases;
2. the recording of an application to resume the proceedings (section 366 subs. 2 of the Code of Criminal Procedure, section 85 of the Act on Regulatory Offences).

(2) Furthermore, the senior judicial officer is to record:

1. other appeals insofar as they are reasoned at the same time;
2. actions and responses to actions;
3. other applications and declarations which can be submitted for recording to the registry insofar as they are comparable in terms of their difficulty and significance with the tasks designated in Nos. 1 and 2.

(3) Section 5 shall not be applied.

#### **Section 24a** **Legal advice aid**

(1) The following tasks shall be assigned to the senior judicial officer:

1. the decision regarding applications to grant and withdraw legal advice aid, including cross-border legal advice aid in accordance with section 10 subs. 4 of the Legal Advice Aid Act (*Beratungshilfegesetz*);
2. the tasks assigned to the Local Court in accordance with section 3 subs. 2 of the Legal Advice Aid Act.

(2) Section 11 subs. 2 sentences 1 to 4 and subs. 3 shall not be applied.

#### **Section 24b** **Administrative assistance**

(1) The *Land* Governments shall be empowered to assign the tasks of administrative assistance to the senior judicial officer by statutory instrument.

(2) The *Land* Governments may assign the empowerment to the *Land* departments of justice.

#### **Division 4**

#### **Other provisions in the field of the constitution of the courts**

#### **Section 25**

#### **Other tasks in the field of family cases**

The following further tasks in family cases, including the corresponding life partnership cases, shall be assigned to the senior judicial officer:

1. (repealed)
2. in maintenance cases
  - a) proceedings in accordance with section 231 subs. 2 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction, unless proceedings are pending in accordance with section 231 subs. 1 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,
  - b) the quantification of a maintenance title in accordance with section 245 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,
  - c) the simplified proceedings regarding the maintenance of minors;
3. in matrimonial property cases
  - a) the substitution of the approval of a spouse, life partner or offspring in accordance with section 1452 of the Civil Code,
  - b) the decision on the deferment of an equalisation claim and assignment of assets in accordance with sections 1382 and 1383 of the Civil Code, in each case also in conjunction with section 6 sentence 2 of the Life Partnerships Act (*Lebenspartnerschaftsgesetz*), with the exception of the decision in cases falling under section 1382 subs. 5 and section 1383 subs. 3 of the Civil Code, in each case also in conjunction with section 6 sentence 2 of the Life Partnerships Act
  - c) the ruling on the deferment of a receivable resulting from a settlement and assignment of assets in accordance with section 1519 of the Civil Code in conjunction with Article 12 para. 2 sentence 2 and Article 17 of the Agreement of 4 February 2010 between the Federal Republic of Germany and the French Republic establishing an Optional Regime of Participation in Matrimonial Assets (*Abkommen zwischen der Bundesrepublik Deutschland und der Französischen Republik über den Güterstand der Wahl-Zugewinnngemeinschaft*), in each case also in conjunction with section 7 of the Act on Life Partnerships, unless a legal dispute becomes pending regarding the receivable resulting from a settlement;
4. in proceedings in accordance with the Act on the EU Violence Protection Procedure (*EU-Gewaltschutzverfahrensgesetz*) of 5 December 2014 (Federal Law Gazette Part I p. 1964), the issuance of certificates in accordance with Article 5 para. 1 and Article 14 para. 1 of Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181 of 29 June 2013, p. 4) as well as their rectification and withdrawal in accordance with Article 9 para. 1 of Regulation (EU) No 606/2013.

#### **Section 25a**

#### **Legal aid**

The tasks corresponding to section 20 subs. 1 Nos. 4 and 5 shall be assigned to the senior judicial officer in proceedings regarding legal aid in accordance with the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction. Section 20 subs. 2 and 3 shall apply mutatis mutandis.

## **Section 26**

### **Relationship between the senior judicial officer and the clerk of the registry**

The competence of the clerk of the registry in accordance with the statutory provisions shall remain unaffected unless provided otherwise in section 20 subs. 1 No. 12 (re sections 726 et seqq. of the Code of Civil Procedure), from section 21 No. 1 (Declaratory proceedings) and from section 24 (Recording of declarations).

## **Section 27**

### **Obligation to perform other official duties**

- (1) By the employment of a civil servant as a senior judicial officer, his/her obligation to perform other official duties, including the tasks of the clerk of the registry, shall remain unaffected.
- (2) The provisions of this Act shall not be applied to the other official duties of a civil servant entrusted with the tasks of the senior judicial officer.

## **Section 28**

### **Judge with jurisdiction**

Insofar as the judge is called upon in accordance with this Act to perform matters which are assigned to the senior judicial officer for independent performance, the court to be determined in accordance with the general procedural provisions shall have jurisdiction for this in the constitution prescribed for the respective official act.

## **Division 5**

### **Tasks assigned to the senior judicial officer in other fields**

## **Section 29**

### **Tasks in international legal relations**

The following tasks shall be assigned to the judicial officer:

1. the execution of foreign requests for service assigned by law to the registry of the Local Court,
2. and the acceptance of applications for support in maintenance cases in accordance with section 7 of the Act for the Recovery of Maintenance in Relations with Foreign States of 23 May 2011 (Federal Law Gazette Part I p. 898), as well as decisions on applications in accordance with section 10 subs. 3 of the Act for the Recovery of Maintenance in Relations with Foreign States;
3. the acceptance of applications in accordance with section 42 subs. 1 and the decision on applications in accordance with section 5 subs. 2 of the International Family Law Procedure Act of 26 January 2005 (Federal Law Gazette Part I p. 162).

## **Section 30**

**(repealed)**

## **Section 31**

### **Tasks of the criminal prosecution office in criminal and regulatory fine proceedings and execution in criminal and regulatory fine cases, as well as of measures to maintain public order and means of coercion**

- (1) Of the tasks of the criminal prosecution office in the criminal proceedings, the following shall be assigned to the senior judicial officer:

1. the tasks in execution of seizure (section 111c subs. 3 first sentence and subs. 4 second and third sentences of the Code of Criminal Procedure),
2. the tasks in execution of seizure and in execution of the attachment of assets, as well as the ordering of distress sale and the further orders issued during implementation (sections 111k and 111p of the Code of Criminal Procedure), insofar as the corresponding tasks have been assigned to the senior judicial officer in compulsory execution and seizure proceedings,
3. tasks related to insolvency proceedings (section 111i of the Code of Criminal Procedure), and
4. tasks related to the administration of seized or attached objects (section 111m of the Code of Criminal Procedure), and
5. tasks related to the execution of the surrender of movable property which has been seized (section 111n in conjunction with section 111c subs. 1 of the Code of Criminal Procedure).

The first sentence shall apply mutatis mutandis in regulatory fine cases to transactions of the public prosecution office.

(2) The tasks incumbent on the execution authority in criminal and regulatory fine cases shall be assigned to the senior judicial officer. Excluded therefrom shall be decisions in accordance with section 114 of the Youth Courts Act. Sentence 1 shall apply mutatis mutandis insofar as measures to maintain public order and means of coercion are implemented by the criminal prosecution office.

(2a) The senior judicial officer shall submit the cases assigned to him/her in accordance with subs. 2 sentence 1 to the public prosecutor if

1. he/she wishes to derogate from a view held by the public prosecutor known to him/her, or
2. such a close link exists between the assigned task and a task to be carried out by the public prosecutor that separate processing of the matters is not expedient, or
3. a measure to maintain public order or a means of coercion has been imposed by the public prosecutor and the latter has reserved the submission fully or in part.

(2b) The senior judicial officer may submit the tasks which have been assigned to him/her in accordance with subs. 2 sentence 1 to the public prosecutor if

1. reservations emerge during processing against the admissibility of execution, or
2. a judgment is to be executed which has been challenged by a co-accused by means of an appeal on points of law.

(2c) The cases that have been submitted shall be processed by the public prosecutor as long as he/she considers this to be necessary. He/she may return the cases to the senior judicial officer. The senior judicial officer shall be bound by a legal view or instructions thereby issued.

(3) The judicial execution of measures to maintain public order and means of coercion shall be assigned to the senior judicial officer unless, in individual cases, the judge reserves execution fully or in part.

(4) (repealed)

(5) Supervision of execution in the youth custody proceedings shall remain reserved to the judge. The execution of tasks by means of which a judicial execution order or a general administrative provision not concerning the supervision of execution are implemented shall be assigned to the senior judicial officer. The Federal Ministry of Justice and Consumer Protection shall be empowered by means of a statutory instrument with the consent of the Federal Council in the field of execution in youth custody proceedings to assign non-judicial



tasks to the senior judicial officer unless the supervision of execution by the youth court judge is impaired or the duty of execution must be reserved to the official charged with the supervision of execution because of its legal difficulty, because of what is at stake for the person concerned, above all for educational reasons, or to safeguard uniform application of the law. The judge may order the submission of assigned execution duties.

(6) The remedy shall be available against the measures of the senior judicial officer which is admissible in accordance with the general provisions of procedural law. If no remedy is available according to these, the judge or public prosecutor in whose place the senior judicial officer acted shall decide on objections. He/she may issue instructions to the senior judicial officer. The powers of the head of the authority emerging from sections 145 and 146 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) shall remain unaffected thereby.

(7) Further, federal and *Land* law provisions which regulate the execution of property fines in administrative enforcement proceedings shall remain unaffected.

## **Section 32**

### **Provisions not to be applied**

Sections 5 to 11 shall not be applicable to the tasks assigned to the senior judicial officer in accordance with sections 29 and 31.

## **Division 6**

### **Final provisions**

## **Section 33**

### **Arrangement for the transitional period, qualification for the office of public notary**

(1) Judicial officers who do not meet the prerequisites of section 2 may be entrusted with the tasks of a senior judicial officer if they passed the examination for the higher intermediate judicial service prior to 1 September 1976 in accordance with the respectively applicable provisions, insofar as they have not taken an examination, if they have worked as a senior judicial officer not only temporarily prior to 1 July 1970.

(2) A civil servant of the judicial service may also be entrusted with the tasks of a senior judicial officer who has acquired the qualification for the office of public notary in the *Land* Baden-Württemberg.

(3) If an official of the judicial service in accordance with subs. 2 performs tasks in accordance with section 3 No. 2 (b), (c) or (i), neither section 15 subs. 1 Nos. 1 to 3, nor section 16, shall apply. The following shall remain reserved to the judge:

1. ordering of presentation before the judge in accordance with section 278 subs. 5 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,
2. ordering, expansion or lifting of a reservation of consent, and
3. the issuance of a measure related to an examination of the state of health, to medical treatment or to a medical intervention in accordance with section 1867, also in conjunction with section 1888 subs. 1 of the Civil Code.

## **Section 33a**

### **Transitional arrangement for the execution of youth custody**

The provisions on the reduction of the burden of the youth court judge in criminal execution matters shall continue to apply until the entry into force of the statutory instrument to be issued on the basis of the empowerment in accordance with section 31 subs. 5.

## **Section 34**

### **Implementation of tasks of senior judicial officers who are competent for a given matter**

- (1) The proviso to this Act contained in Annex I Chapter III Subject Area A Section III No. 3 of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990 (Federal Law Gazette 1990 Part II p. 889) shall no longer be applied after 31 December 1996.
- (2) Employees who were entrusted with senior judicial officers' tasks (senior judicial officers who are competent for a given matter) in accordance with this proviso may continue to perform the tasks of a senior judicial officer in the fields assigned to them after expiry of the period named in subs. 1.
- (3) Senior judicial officers who are competent for a given matter may also be entrusted with senior judicial officers' tasks in further matters after 31 December 1996 if they are suited to perform tasks in these areas on the basis of further training measures. This shall apply *mutatis mutandis* to employees who at this time have only successfully attended further training measures for the tasks of judicial administration which are carried out by civil servants of the higher intermediate service.

#### **Section 34a**

##### **Training of senior judicial officers who are competent for a given matter to become senior judicial officers**

- (1) Senior judicial officers who are competent for a given matter who have attended training courses intended for them at a University of Applied Sciences (*Fachhochschule*), and who have successfully completed this training by passing an examination, shall obtain the status of a senior judicial officer and may be entrusted with all senior judicial officers' tasks. The training courses shall last a total of eighteen months and shall impart to the participants the theoretical knowledge and methods, as well as the practical vocational skills and knowledge which are required to carry out the tasks of a senior judicial officer.
- (2) Successfully-completed basic and further training courses which a senior judicial officer who is competent for a given matter has attended since 3 October 1990 can be counted towards the training courses intended for the areas in question in accordance with subs. 1. It shall be possible for an examination in accordance with subs. 1 not to be required in these areas.
- (3) The *Länder* may provide that the examination in accordance with subs. 1 in each case is taken for the individual areas at the end of the training courses.
- (4) Details shall be regulated by *Land* law.

#### **Section 35 (repealed)**

#### **Section 35a**

##### **Senior court clerks and order-drafters in Baden-Württemberg**

- (1) Senior court clerks with a qualification for the higher intermediate administrative or judicial service who have exercised the office within the meaning of section 32 of the *Land* Act on Matters of Non-contentious Jurisdiction (*Landesgesetz über die freiwillige Gerichtsbarkeit*) on a non-temporary basis for at least three years up to 31 December 2017 may carry out the tasks of a senior judicial officer in matters related to land registers as civil servants in the service of the *Land*. The *Land* shall ensure the technical qualification by providing suitable further training.
- (2) Civil servants in the intermediate service who have been employed for at least five years in the judicial service and who were primarily deployed as order-drafters in land registry offices prior to 1 January 2018 may carry out the tasks of a senior judicial officer in matters related to land registers as civil servants in the service of the *Land*. Prior to carrying out the tasks of a senior judicial officer, these civil servants must successfully attend courses at a University of Applied Science intended for them lasting at least eight months which impart the theoretical knowledge and methods, as well as the practical vocational abilities and knowledge, which are needed to perform the tasks of a senior judicial officer in matters related to land registers.
- (3) The details shall be regulated by *Land* law.

### **Section 36 (repealed)**

Section 36 rescinded by Art. 6 No. 2 of the Act of 15 July 2009 I 1798 with effect from 1 January 2018.

### **Section 36a**

#### **Reserve for the Free and Hanseatic City of Hamburg**

Section 24 subs. 2 shall apply in the Free and Hanseatic City of Hamburg, subject to the proviso that the senior judicial officer is only to record the applications and declarations designated therein if this is necessary because of the connection with a task which he/she is to carry out, because of legal difficulties or for other reasons.

### **Section 36b**

#### **Assignment of senior judicial officers' tasks to the clerk of the registry**

(1) The *Land* Governments shall be empowered to assign the following tasks to be carried out by the senior judicial officer in accordance with this Act completely or partly to the clerk of the registry by means of a statutory instrument:

1. the tasks in the recording of wills and contracts of inheritance for official custody in accordance with sections 346 and 347 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction (section 3 No. 2 (c));
2. the reminder proceedings within the meaning of the Seventh Book of the Code of Civil Procedure, including the setting of the deadline for an objection in accordance with section 700 subs. 1 in conjunction with section 339 subs. 2 and 3 of the Code of Civil Procedure, as well as submission to the court designated as having jurisdiction for the contentious proceedings, also insofar as the reminder proceedings are processed automatically (section 20 subs. 1 No. 1);
3. the granting of a further executable copy in cases falling under section 733 of the Code of Civil Procedure (section 20 subs. 1 No. 12);
4. the granting of further executable copies of court certificates in accordance with section 797 subs. 2 No. 1 of the Code of Civil Procedure (section 20 subs. 1 No. 13);
5. the tasks incumbent on the criminal prosecution office as the execution authority in criminal and regulatory fine cases on execution of criminal and regulatory fines (section 31 subs. 2); this shall not include the execution of imprisonment for failure to pay a fine.

The *Land* Governments may assign the empowerment to the *Land* departments of justice.

(2) The clerk of the registry shall take all measures which are required to carry out the tasks assigned to him/her. The provisions regarding the submission of specific tasks by the senior judicial officer to the judge or public prosecutor (sections 5, 28 and 31 subs. 2a and 2b) shall apply *mutatis mutandis*.

(3) When carrying out tasks in accordance with subs. 1 sentence 1 No. 2, in cases falling under sections 694, 696 subs. 1 and section 700 subs. 3 of the Code of Civil Procedure a ruling of the trial court to amend a decision of the clerk of the registry (section 573 of the Code of Civil Procedure) may not be applied for.

(4) When carrying out tasks in accordance with subs. 1 sentence 1 No. 5, objections against measures of the clerk of the registry shall be decided on by the senior judicial officer in whose place the clerk has acted. He/she may issue instructions to the clerk. The powers of the head of the authority from sections 145 and 146 of the Courts Constitution Act shall remain unaffected thereby.

### **Section 37**

#### **Senior judicial officers' tasks in accordance with *Land* law**

The *Länder* may assign to the senior judicial officer tasks which are assigned to the courts by provisions of *Land* law.

**Section 38**  
**Rescission and amendment of provisions**

- (1) (Rescission of provisions)
- (2) (Amendment of provisions)
- (3) (repealed)

**Section 39 (deleted)**

**Section 40**  
**(Entry into force)**

**Annex EV**  
**Excerpt from Unification Treaty (EinigVtr) Annex I**

Chapter III Subject Area A Sections III and IV  
(Federal Law Gazette Part II 1990, 889, 927, 941)

Section III

- Provisos for the acceding territory (Art. 3 of the Unification Treaty) -

Section IV

- Special arrangement for the *Land* Berlin -

Section III

Subject to the special arrangement for the *Land* Berlin contained in Section IV, federal law shall enter into force ... in the territory designated in Article 3 of the Treaty with the following provisos:

...

3. Act on Senior Judicial Officers of 5 November 1969 (Federal Law Gazette Part I p. 2065), most recently amended by Article 9 para. 2 of the Act of 26 June 1990 (Federal Law Gazette Part I p. 1163), with the following provisos:

a) So long as and to the extent that senior judicial officers who have undergone training satisfying the requirements of section 2 are not available, or not available in sufficient numbers, the tasks of judicial administration assigned to senior judicial officers shall be carried out by judges and by notaries who have worked in the State Notary's Office, and tasks of the public prosecution office, insofar as they have been assigned to the senior judicial officer by the Act on Senior Judicial Officers, shall be carried out by public prosecutors.

Court secretaries may perform tasks of senior judicial officers in fields which are or can be assigned to them for performance in accordance with the previous law of the territory designated in Article 3 of the Treaty.

Court secretaries may be entrusted with further tasks of senior judicial officers in accordance with detailed provisions of *Land* law if they are suited on the basis of further training measures to perform these tasks.

b) The *Land* departments of justice may determine that persons may also be entrusted with tasks of a senior judicial officer who has a level of knowledge and performance in the field which is to be assigned to them, comparable to the level imparted by the training in accordance with section 2.

c) Section 11 subs. 3 shall apply to the challenging of decisions which the judge has taken in place of the senior judicial officer; section 11 subs. 5 shall remain unaffected.

...

28. The following general provisos shall apply in other respects unless Nos. 1 to 27 provide otherwise:

- a) Insofar as in provisions which are enacted in the territory designated in Article 3 of the Treaty or have been enacted on the basis of the State Treaty of 18 May 1990 refer to statutory provisions of the Federal Republic of Germany which do not apply in this territory, the corresponding provisions of the German Democratic Republic shall be applicable. If there are no such provisions, or if their application would contradict the purpose of the referral, the provisions to which reference is made shall apply mutatis mutandis.
- b) Insofar as law of the German Democratic Republic which continues to apply refers to provisions which are no longer applicable, the corresponding provisions of the law of the Federal Republic of Germany shall be applied.
- c) Insofar as other provisions refer to provisions which are amended by this Treaty, they shall be substituted by the amended provisions.
- d) Provisos a) to c) shall also apply if provisions link to specific sets of proceedings.
- e) If in the provisions which are enacted in the territory designated in Article 3 of the Treaty, and in the law applicable in this territory, comparable authorities, other agencies or proceedings are given different designations, the agencies or proceedings designated in the law applicable there shall substitute those which are designated in the provisions which are enforced; the same shall apply to deviations in the designation of other circumstances which are comparable in terms of their content.
- f) Forms introduced by means of an ordinance may be used in an adapted form.
- g) The proceedings that are pending on the date of accession becoming effective shall be continued in the state which they have reached in accordance with the provisions that have been enacted.
- h) The running of a deadline under procedural law which commenced prior to accession becoming effective shall be in accordance with the provisions applicable in the German Democratic Republic.
- i) If an appeal or remedy has already been submitted on the date of accession becoming effective, or if it has not yet been submitted but the deadline for its submission has not yet expired, the admissibility of the appeal or remedy and of the further proceedings thereto shall be in accordance with the provisions which have been enacted. However, if an appeal or remedy has already been lodged in compliance with the formal provisions of the law of the German Democratic Republic, derogating provisions on form shall not make them inadmissible; applications for appeals and reasoning which are necessary in accordance with the provisions that have been enacted shall be subsequently submitted within one month after accession becoming effective. If the admissibility of an appeal in accordance with the provisions which have been enacted depends on its being admitted by the court whose decision has been challenged, the appeal court shall also rule on the admission of the appeal.
- j) If prior to accession becoming effective an appeal or remedy has been admissibly lodged in accordance with the law of the German Democratic Republic, but is no longer admissible in accordance with the provisions that have been enacted, and is hence to be rejected, the costs and necessary expenses in

the appeal or remedy proceedings shall be charged to the state treasury. The same shall apply to actions if the empowerment to lodge an action ceases to apply.

k) If the competence for a case is transferred to another agency by virtue of the enactment of federal law in the territory designated in Article 3 of the Treaty, the agency previously competent shall promptly forward the files and records related to this matter available to it to the agency now competent. The same shall apply to files and records which have been only temporarily handed to other agencies by the previously competent agency.

l) Appeal proceedings that are pending on the date of accession becoming effective shall be completed in accordance with the procedural law of the German Democratic Republic.

#### Section IV

...

4. The provisos listed in Section III shall furthermore apply in the *Land* Berlin. They shall not apply insofar as they are connected with the maintenance of the special court structure in the territory of Article 1 para. 1 of the Treaty.