

# FRAMEWORK ACT FOR HIGHER EDUCATION

## HOCHSCHULRAHMENGESETZ - HRG

as promulgated on 19 January 1999 (BGBl. I, p. 18) and as amended by Article 1 of the Act of 27 December 2004 (BGBl. I, p. 3835) considering the decision of the Federal Constitutional Court of 26 January 2005 (2 BvF 1/03)

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## **Section 1**

### **Scope**

"Institutions of higher education" within the meaning of this Act are the universities, the colleges of education, the colleges of art, the universities of applied sciences (*Fachhochschulen*) and the other educational institutions which, under *Land* law, are public institutions of higher education. To the extent defined in section 70, this Act shall also apply to state-recognized institutions of higher education.

## **Chapter 1**

### **Functions of the Institutions of Higher Education**

#### Part 1

#### General Provisions

### **Section 2**

#### **Functions**

(1) In accordance with the specific role assigned to them, the institutions of higher education shall contribute to the fostering and development of the arts and sciences through research, teaching, studies and continuing education in a free, democratic and social state based on the rule of law. They shall prepare students for occupations which require the application of scientific findings and scientific methods or creative ability in the artistic field.

(2) In accordance with the specific role assigned to them, the institutions of higher education shall promote the emergence of new talent in the arts and sciences.

(3) The institutions of higher education shall encourage the continuing education of their own staff.

(4) The institutions of higher education shall take an active part in improving the social situation of their students; they shall take the special needs of students with children into consideration. They shall ensure that disabled students do not suffer any disadvantage in their studies and that they are able to use the facilities of the institution, if possible without assistance. They shall promote sports activities within their sphere of responsibility.

(5) The institutions of higher education shall promote international and, in particular, European cooperation in the higher-education sector and the exchange of students and staff between German and foreign institutions of higher education; they shall take the specific needs of foreign students into consideration.

(6) In the fulfilment of their functions, the institutions of higher education shall cooperate with one another and with other state and state-supported institutions of research and education. This applies in particular to cooperation in higher education which has become necessary since the establishment of German unity.

(7) The institutions of higher education shall promote the transfer of knowledge and technology.

(8) The institutions of higher education shall inform the public about the fulfilment of their functions.

(9) The diverse roles of the various types of institutions of higher education referred to in the first sentence of section 1 of this Act and the functions of specific institutions of higher education shall be defined by the *Land* concerned. Functions other than those mentioned in this Act shall not be assigned to the institutions of higher education unless they are related to the functions enumerated in paragraph 1 above.

### Section 3

#### Equal rights for women and men

The institutions of higher education shall promote the achievement of equal rights for women and men and shall work towards the removal of existing disadvantages. The functions and participatory rights of the commissioners for women's affairs and equal rights of the institutions of higher education shall be regulated by *Land* legislation.

### Section 4

#### Freedom of art and science and of research, teaching and study

(1) The *Land* and the institutions of higher education shall ensure that the members of each institution of higher education are able to exercise the constitutional rights guaranteed in the first sentence of Article 5(3) of the Basic Law (*Grundgesetz*).

(2) Freedom of research (first sentence of Article 5(3) of the Basic Law) shall cover in particular the question examined, the methodological principles applied and the evaluation and dissemination of findings. Decisions on research matters may be taken by the competent university bodies to the extent that they refer to the organization of research activities, the promotion and coordination of research projects and the concentration of research activities on specific areas; such decisions shall not impair freedom of research as defined in the first sentence above. The first and second sentences above shall apply, *mutatis mutandis*, to artistic development projects and artistic practice.

(3) Without prejudice to the second sentence of Article 5(3) of the Basic Law, freedom of teaching (first sentence of Article 5(3) of the Basic Law) shall, within the framework of the teaching duties to be performed, cover in particular the holding of classes, the presentation of content, the use of teaching methods and the right to voice professional opinions on scientific and artistic issues. Decisions on questions of teaching may be taken by the competent university bodies to the extent that they relate to the organization of teaching activities and the adoption and observation of study and examination regulations; they must not impair freedom of teaching as defined in the first sentence above.

(4) Without prejudice to the study and examination regulations, freedom of study shall cover in particular the free choice of classes and the right of students to establish their own priorities within a course of study as well as to formulate and express their own opinions on artistic and scientific subject matter. Decisions on study may be taken by the competent university bodies to the extent that they relate to the organization and proper implementation of teaching and studying activities and to guaranteeing the orderly pursuit of studies.

### Section 5

#### Government funding

Government funding for institutions of higher education shall be based on performance in research and teaching and in promoting the emergence of new talent in the sciences and arts. Progress in the achievement of gender equality shall also be taken into consideration.

## **Section 6**

### **Evaluation of research, of teaching and of efforts to promote the emergence of new talent in the arts and sciences and gender equality**

The work of institutions of higher education in research and teaching and in the promotion of the emergence of new talent in the arts and sciences and their progress towards the achievement of gender equality shall be evaluated on a regular basis. Students shall be involved in the evaluation of the quality of teaching. The results of such evaluation shall be published.

## **Part 2**

### **Studies and Teaching**

## **Section 7**

### **Purpose of study**

The purpose of teaching and study is to prepare students for a field of professional activity and to impart to them the requisite specialized knowledge, skills and methods in a way appropriate to each course so as to enable them to perform scientific or artistic work and to act responsibly in a free, democratic and social state governed by the rule of law.

## **Section 8**

### **Reform of higher education**

The institutions of higher education shall have the permanent task of reviewing and developing, in cooperation with the competent government authorities, the content and form of courses of study in the light of developments in the arts and sciences and of the practical requirements and changes necessary in the various professions.

## **Section 9**

### **Coordination of study and examination regulations**

(1) The Federal Government and the *Länder* governments shall jointly ensure that fundamental and structural questions regarding the range of available courses of study are addressed, due consideration being given to developments in the arts and sciences, in professional practice and in the system of higher education.

(2) The *Länder* shall jointly ensure that the equivalence of corresponding course and examination credits and degrees and the possibility of transferring to other institutions of higher education are guaranteed.

(3) The institutions of higher education and experts from professional life shall be involved in the performance of the tasks referred to in paragraphs 1 and 2 above.

## **Section 10**

### **Courses of study**

(1) Courses of study shall normally lead to a degree which qualifies the graduate to enter a profession. For the purposes of this Act, a degree qualifying a graduate to enter a profession also means a degree which qualifies the graduate to engage in preparatory service or introductory training required for entry into a profession. Where practical training is a prerequisite for completion of the course of study, the content and timing of such training shall be coordinated with and, if possible, incorporated into the course of study.

(2) Examination regulations shall prescribe the periods of study within which a degree qualifying the graduate to enter a profession may be obtained (standard period of study). The standard period of study shall include practical training periods incorporated into the course of study, practical study semesters and examination periods. The standard period of study shall govern the organization of courses of study by the institutions of higher education, the provision of a programme of subjects and classes, the examination procedure, the determination of training capacity (section 29(1) of this Act) and the calculation of student numbers for the purposes of higher-education planning.

### **Section 11**

#### **Standard period of study for the first degree qualifying the graduate to enter a profession**

Without prejudice to the provisions of the second sentence of section 19(2) of this Act, the standard period of study up to the first degree qualifying the graduate to enter a profession shall be

1. a maximum of four years for courses of study at universities of applied sciences (*Fachhochschulen*)
2. four and a half years for all other courses of study.

Standard periods of study exceeding these limits may be fixed in special substantiated cases; this also applies to courses involving special forms of study. Shorter periods of study shall be fixed in appropriate disciplines for degree courses qualifying the graduate to enter a profession.

### **Section 12**

#### **Postgraduate courses**

Courses of study for postgraduates may be offered for the purpose of conferring advanced academic or professional qualifications or of intensifying the study of a subject, in particular with a view to developing emergent new talent in the arts and sciences. The duration of postgraduate study courses leading to a *Diplom* or *Magister* degree shall not exceed two years. This shall apply without prejudice to section 19(3) of the present Act.

### **Section 13**

#### **Distance study, multimedia**

(1) In the context of the reform of higher education and teaching practice and the provision of a programme of subjects and classes, the opportunities offered by distance study and by information and communications technology shall be exploited. The Federal Government, the *Länder* and institutions themselves shall encourage such development within the scope of their responsibilities.

(2) The performance criteria set in examination regulations may also be met through successful completion of a unit of distance study, provided that the content of this unit is equivalent to that of the corresponding course that is available on campus. Equivalence of content shall be regulated by *Land* legislation.

### **Section 14**

#### **Academic guidance**

The institution of higher education shall inform students and applicants of the available courses of study and of the content, structure and requirements of each course. It shall assist students throughout the duration of their courses of study by providing them with specialized advice relating to their studies. By the end of the first year of each student's studies, it shall assess his or her progress, provide students with information and, if necessary,

with course guidance. In providing such guidance, the institution shall cooperate in particular with both the bodies responsible for careers guidance and those responsible for state examinations.

### **Section 15**

#### **Examinations and system of credit points**

(1) As a rule, a course of study shall be completed by an academic, state or ecclesiastical examination. In courses of study which have a standard period of at least four years, an intermediate examination (*Zwischenprüfung*) shall be held. Tests may also be conducted as an integral part of the course of study. As a rule, passing the intermediate examination shall be a prerequisite for advancement from the general stage to the specialized stage (*Hauptstudium*) of a course of study.

(2) In all appropriate courses of study, conditions shall be laid down in which a final examination taken during the standard period of study may be disregarded if the candidate does not pass it ("free attempt", *Freiversuch*). *Land* legislation may provide that students passing an examination in such a "free attempt" can repeat the examination with a view to achieving higher grades.

(3) For the purpose of certifying completion of course units and examination performance, a system of credit points shall be introduced; this system shall also enable students to transfer their credits to other courses of study at the same or another institution of higher education.

(4) Performance in an examination may only be assessed by persons having themselves a qualification which is at least the same as, or equivalent to, the qualification established by the said examination.

### **Section 16**

#### **Examination regulations**

Academic examinations shall be based on examination regulations requiring the approval of the authority competent under *Land* law. Examination requirements and procedures shall be such that the entire final examination can be taken within the standard period of study. Examination regulations must enable candidates to benefit from the protection periods stipulated in sections 3 (2) and 6 (1) of the Maternity Protection Act (*Mutterschutzgesetz*) and from the parental leave periods provided by *Land* legislation. Examination regulations must take the special needs of disabled students into consideration in order to preserve their equality of opportunity. Approval of examination regulations shall be withheld if the submitted regulations envisage a standard period of study which is inconsistent with section 11 or section 19 of the present Act. In particular, approval may be withheld if the examination regulations fail to comply with other provisions governing the standard period of study. The authority competent under *Land* law may require that existing examination regulations be modified, particularly if they fail to meet the conditions laid down in the second to sixth sentences above.

### **Section 17**

#### **Examinations taken early**

Academic examinations may be taken prior to the registration deadline, provided that the candidate can prove that he or she has fulfilled the requirements for admission to the examination.

**Section 18**  
**Academic degrees**

(1) On the basis of an academic examination for qualification to enter a profession, an institution of higher education may confer a *Diplom* degree, the title of which shall refer to the discipline in which it is awarded. *Diplom* degrees conferred on the basis of an academic examination taken at a *Fachhochschule* or in *Fachhochschule* courses offered at other institutions of higher education shall include in their title the word "*Fachhochschule*" and/or the abbreviation "*FH*". The institution of higher education may also confer a *Diplom* degree on the basis of a state or ecclesiastical examination with which the student completes his or her period of studies. *Land* legislation may provide that an institution of higher education shall award a *Magister* degree as qualification for a profession; unless otherwise provided in section 19 of this Act, this shall not apply to final examinations taken at the end of a *Fachhochschule* course. Pursuant to more detailed provision by *Land* legislation, an institution of higher education may award degrees other than those referred to in the first, second and fourth sentences above as qualification for a profession on the basis of an agreement concluded with an institution of higher education abroad. A degree conferred in accordance with the fifth sentence above may be awarded in addition to one of the degrees referred to in the first, second and fourth sentences.

(2) In all other respects, *Land* legislation shall determine which academic degrees may be awarded. It may provide that the colleges of art shall award degrees other than those referred to in paragraph 1 above as qualification for a profession.

**Section 19**  
**Bachelor's and Master's degree courses**

(1) Institutions of higher education may establish courses of study leading to a Bachelor's or Baccalaureate degree or to a Master's or *Magister* degree.

(2) On the basis of an examination for qualification to enter a profession, the institution of higher education may confer a Bachelor's or Baccalaureate degree. The standard period of study shall be at least three and not more than four years.

(3) On the basis of a further examination for advanced qualification to enter a profession, the institution of higher education may confer a Master's or *Magister* degree. The standard period of study shall be between one year and two years.

(4) Where courses of study leading to the degrees referred to in paragraphs (2) and (3) above are followed consecutively, the total standard period of study shall not exceed five years.

(5) The second sentence of section 11 shall apply, *mutatis mutandis*.

(6) On request, the institutions of higher education shall add an English translation to the documents attesting to the award of such academic degrees.

**Section 20**  
**Study at institutions abroad**

Course and examination credits earned at institutions abroad shall be recognized if their equivalence has been established. This shall apply without prejudice to the second sentence of section 5a(1) and section 112 of the German Judiciary Act (*Deutsches Richtergesetz*).

**Section 21**  
(repealed)

Part 3  
Research

**Section 22**  
**Purpose and coordination of research**

The purpose of research at institutions of higher education shall be the acquisition of scientific knowledge and the scientific underpinning and development of teaching and study. Research at institutions of higher education may, subject to the specific role of the institution concerned, relate to any academic discipline and to the practical application of scientific findings, including the potential impact of such application. For the purpose of coordinating their research projects and research priorities and of planning and executing joint research projects, the institutions of higher education shall cooperate with one another, with other research establishments and with establishments in the field of supraregional research planning and promotion.

**Section 23**  
(repealed)

**Section 24**  
**Publication of research findings**

When research findings are published, those staff members who have made their own scientific contribution to the research or played some other major part in it shall be cited as co-authors; wherever possible, their contribution shall be identified.

**Section 25**  
**Externally funded research**

(1) The members of an institution of higher education engaged in research shall be entitled, as part of their official duties, to carry out research projects which are not financed from the institution's own budget but from funds provided by third parties, without prejudice to their obligation to perform their other official duties. The implementation of the projects referred to in the first sentence above shall be considered part of an institution's academic research.

(2) Any member of an institution of higher education shall be entitled to carry out a research project pursuant to paragraph 1 above at the institution of higher education, provided that the fulfilment of the institution's other functions and the rights and obligations of other persons are not impaired and that adequate consideration is

given to commitments that might result from the project; as a rule, the research findings derived from such projects should be published within a reasonable period of time.

(3) Notice shall be given of any research project covered by paragraph 1 above. The execution of such a project may not be made contingent on any approval. The use of the institution's staff, equipment and facilities may be prohibited or restricted by the imposition of conditions only if such a measure is dictated by the provisions of paragraph 2 above.

(4) The funds for research projects carried out at an institution of higher education shall be administered by the institution concerned. The funds shall be employed for the purpose specified by the third party from which they have been received and expended in accordance with the latter's conditions unless there are legal provisions to the contrary. Matters not covered by the said conditions shall be regulated by the provisions of *Land* legislation. At the request of the member carrying out the project, the institution of higher education shall refrain from administering the funds if this accords with the conditions imposed by the funding party; in such a case, the third sentence of this paragraph shall not apply.

(5) Primarily employed staff to be paid from third-party funds for research projects being carried out at an institution of higher education shall be recruited as staff of the institution on the basis of employment contracts, without prejudice to the provisions of the third sentence of this paragraph. The engagement of such staff shall be conditional upon their having been proposed by the member of the institution who is carrying out the project. If the conditions imposed by the funding party so permit, the member of the institution may, in justified cases, conclude the employment contracts with such staff.

(6) Financial returns earned by the institution of higher education from research projects carried out at the institution, in particular from income earned by the institution in return for the use of staff, equipment and facilities, shall be at the institution's disposal for the performance of its tasks.

## **Section 26**

### **Development projects**

The provisions of this Part shall apply, *mutatis mutandis*, to development projects within the framework of applied research and to artistic development projects.

## **Chapter 2**

### **Admission to higher education**

## **Section 27**

### **General requirements**

(1) All Germans within the meaning of Article 116 of the Basic Law (*Grundgesetz*) shall be entitled to pursue the course of higher education of their choice if they furnish proof of the requisite qualifications. Nationals of any other Member State of the European Union shall be placed on the same footing as Germans if they provide evidence of the language proficiency required for participation in higher education. Impediments to admission relating to the personal characteristics of applicants other than qualification shall be governed by *Land* law.

(2) In the case of admission to studies leading to a first degree qualifying the graduate for entry into a profession, the proof required under the first sentence of paragraph 1 above shall, in principle, be furnished by the successful completion of a course of school education designed to prepare pupils for entry into higher education. Vocationally qualified applicants may also furnish proof of qualification in another form, subject to the provisions of the relevant *Land* legislation.

(3) The present Act shall apply without prejudice to other legal provisions pursuant to which other persons are placed on the same footing as Germans as defined in paragraph 1 above.

#### **Section 28**

(repealed)

#### **Section 29**

##### **Criteria governing training capacity**

(1) In cooperation between institutions of higher education and the competent government authorities, uniform principles for ascertaining and determining the training capacity of institutions of higher education shall be developed. The calculation of an institution's training capacity shall, in principle, be based on the standard period of study laid down for each of its courses.

(2) If, according to the findings of the central office referred to in section 31 of this Act, it is to be expected that admission of all applicants for a specific course of study at the institutions within the purview of this Act will not be possible, the maximum number of students to be admitted by each institution to the course in question (admission quota) may not be lower than is absolutely necessary for the proper fulfilment of the institution's research, teaching and study functions and of its responsibility for health care, given the available resources in terms of staff, space and general as well as subject-related facilities. The establishment of the admission quota shall be preceded by a review designed to ascertain whether the institution, within the limits of its resources, has taken all possible steps to make full use of its training capacity.

#### **Section 30**

##### **Establishment of admission quotas**

(1) Admission quotas shall be established by *Land* law. They shall be laid down for each institution if places on a particular course of study are to be allocated by the central office in accordance with the procedure described in section 31(1) of this Act.

(2) Admission quotas shall be established solely for individual courses of study and for a specific period not exceeding one year.

(3) Prior to the establishment of an admission quota, the competent *Land* authority shall ask each of the institutions concerned to submit its estimate of the number of students that can be admitted. In its report, the institution must state how its training capacity has been calculated; the uniform principles to be developed pursuant to section 29(1) of this Act shall be applied. In the cases referred to in section 29(2), the report must state whether the institution, within the limits of its resources, has taken all possible steps to make full use of its training capacity.

### Section 31

#### Central allocation of places on courses of study

(1) Places on courses of study for which admission quotas have been laid down for several institutions of higher education may be allocated by the central office established by the *Länder*. A course of study has to become subject to the allocation procedure of the central office as soon as possible once the central office has ascertained that admission quotas have been laid down for the course in question for all state institutions and that the number of applicants is likely to exceed the total number of available places, unless the institutions reserve the right to admit students to specific courses on account of the nature of the admission requirements or the selection criteria. Places on a particular course of study shall be subject to the allocation procedure of the central office if the latter ascertains that admission quotas have been laid down for the majority of state institutions.

(2) If the total number of available places at all institutions on a given course of study that is subject to the central allocation procedure under paragraph 1 above is sufficient to accommodate all applicants, the places available on that course at the individual institutions shall, as far as possible, be awarded by the central office on the basis of the applicants' preferred location; if necessary, up to one quarter of the places on the course in question shall be allocated on the basis of the level of qualification attested in accordance with section 27 of this Act, and the remaining places shall be allocated primarily on the basis of the social reasons, especially family and financial situation, with which applicants justify their choice of location (*distribution procedure/Verteilungsverfahren*).

(3) If the total number of available places at all institutions on a given course of study which is subject to the central allocation procedure under paragraph 1 above is not sufficient to accommodate all applicants, applicants shall be selected in accordance with sections 32 to 35 of this Act (*selection procedure/Auswahlverfahren*); the applicants thus selected shall be admitted by the institution concerned in the cases referred to in section 32(3)(3). In all other cases, they shall, as far as possible, be assigned to the individual institutions on the basis of the applicants' preferred location; if necessary, they shall be allocated primarily on the basis of the level of qualification attested in accordance with section 27 of this Act in the cases referred to in section 32(3)(1) of this Act, and the remaining places shall be allocated primarily on the basis of the social reasons, especially family and financial situation, with which applicants justify their choice of location.

(4) If the training capacity at a specific institution is greater during the first part of a course of study than during the later parts of such a course, allocation and registration may be limited to the first part of such a course if it is guaranteed that students can continue their studies at other institutions within the purview of this Act.

### Section 32

#### Selection procedure

(1) In the cases referred to in section 31(3) of this Act, the places available for first-year students on the relevant courses of study shall be allocated in accordance with the principles laid down in paragraphs (2) and (3) below, with due regard to the order of course preference indicated by applicants. Applicants for these places may rank at least six locations in their order of preference as specified by the provisions of *Land law*.

(2) Up to three tenths of the places on courses of study shall be reserved for:

1. applicants for whom refusal of admission would cause exceptional hardship, particularly from a social point of view;

2. applicants who, on the basis of the appropriate regulations, have committed themselves to practising a profession in sectors of particular public need;
3. foreign and stateless applicants; commitments undertaken by virtue of international agreements shall be taken into account;
4. applicants who, by dint of another as yet uncompleted course of study or other equivalent training courses, have acquired the qualifications necessary under *Land* law for the pursuit of their chosen course of study (section 27 of this Act); such applicants are selected on the basis of their acquired level of qualification (section 27). These applicants may not be admitted to places allocated in accordance with the procedure described in paragraph 3 below;
5. applicants who have already completed another course of study (applicants for further studies/*Zweitstudienbewerber*). Such applicants are selected on the basis of both the examination results achieved on completion of the first course of studies and the salient reasons for their application to pursue a further course of study. These applicants may not be admitted to places allocated in accordance with the procedure described in paragraph 3 below.

*Land* law may provide that places on courses of study which are allocated pursuant to item 1 above shall be reserved for vocationally qualified applicants (second sentence of section 27(2) of this Act); these applicants shall not be admitted to places that are allocated on the basis of paragraph 3 below. Unclaimed places on courses of study shall be added to the places that may be allocated on the basis of paragraph 3 below .

(3) The remaining places on courses of study shall be allocated as follows:

1. One fifth of the places at each institution shall be allocated by the central office on the basis of qualification levels attested in accordance with section 27 of this Act. Qualification levels which differ only very slightly may be treated as representing one and the same level. The *Länder* shall ensure that proof of scholastic achievement in any one *Land* is comparable with other such proof within the same *Land* or in other *Länder* as regards requirements and assessment criteria. As long as there is no guarantee of comparability among the *Länder*, quotas shall be established for each *Land* for the purpose of selecting applicants for places in higher education. The quota to be allocated to each *Land* shall be calculated on the following basis: one third shall be based on the *Land's* share of the total number of applicants for the course of study in question; two thirds shall be based on the *Land's* share of the total population of Germany in the age group from eighteen to twenty inclusive. The quotas thus established for the *Länder* Berlin, Bremen and Hamburg shall be increased by three tenths each. When the proportion of applicants is calculated, consideration shall only be given to those persons who hold higher-education entrance qualifications recognized on a reciprocal basis by all the *Länder*.
2. One fifth of the places on courses of study shall be allocated on the basis of the time that has elapsed since the acquisition of the qualifications as defined in section 27 of this Act which are required for the pursuit of the chosen course of study (waiting period/*Wartezeit*). Periods spent studying at institutions of higher education shall not be counted towards the waiting period; this new restriction shall only apply to periods of study occurring after the entry into force of this Act.
3. In all other cases, places shall be allocated by the institutions following a selection procedure. The institution concerned shall base its decision to allocate places on courses of study under this procedure on the provisions of relevant *Land* legislation, in particular on:
  - a) the level of qualification as defined in section 27 of this Act,
  - b) the weighted individual grades of the qualification as defined in section 27 of this Act which provide information about the applicant's aptitude for the chosen field of study,
  - c) the results of a scholastic aptitude test in the chosen subject,

- d) the nature of any vocational training or occupation pursued by the applicant,
- e) the results of an interview to be conducted with the applicant by the institution; the purpose of this interview is to obtain information about the applicant's motivation and his or her identification with the chosen course of study and profession and to avoid any misjudgement concerning the requirements of the course of study,
- f) a combination of the criteria stipulated in a) to e) above.

The level of qualification as defined in section 27 of this Act must be a decisive criterion in the selection of applicants. The number of participants in the selection procedure may be limited. In this case the institution shall base its decision on participation on the principles stipulated in items a) to d) of the second sentence above, the level of preference with regard to locations, or a combination of these criteria. Applicants selected in accordance with subparagraph 1 or 2 above shall not be included in the selection procedure.

(4) With regard to the decision to be taken in cases where several applicants hold equal entrance qualifications, provision may be made for the criteria laid down in paragraph 3(1) and (2) to be combined or, without prejudice to the second sentence of section 34, for applicants to be selected by the drawing of lots.

### **Section 33**

(repealed)

### **Section 33a**

(repealed)

### **Section 34**

#### **Prohibition of discrimination**

Applicants must not suffer any disadvantage

1. as a result of the fulfilment of their military or other service pursuant to Article 12a of the Basic Law (*Grundgesetz*) or their engagement to perform such service or equivalent service for a period of up to three years,
2. as a result of their service as a development-aid worker in accordance with the Development Aid Workers Act (*Entwicklungshelfergesetz*) of 18 June 1969 (Federal Law Gazette (BGBl.) I, p. 549), last amended by Article 15 of the Act of 21 June 2002 (BGBl. I, p. 2167),
3. as a result of their completion of one year's voluntary social service in accordance with the Law on the Promotion of a Year of Voluntary Social Service (*Gesetz zur Förderung eines freiwilligen sozialen Jahres*) of 17 August 1964 (BGBl. I, p. 640), as amended by the announcement of 15 July 2002 (BGBl. I, p. 2596), or from the completion of one year's voluntary environmental service under the Law on the Promotion of a Year of Voluntary Environmental Service (*Gesetz zur Förderung eines freiwilligen ökologischen Jahres*) of 15 July 2002 (BGBl. I, p. 2600) or in the framework of a pilot project supported by the Federal Government, or
4. as a result of their providing care or nursing assistance, for a period of up to three years, for a child under 18 years of age or for another dependent relative.

In cases where applicants are rated equally on the basis of section 32(2) and (3), the applicants referred to in the first sentence above shall take precedence over others.

### **Section 35**

#### **Inadmissibility of region of origin or residence as a selection criterion**

Without prejudice to the provisions of the fourth, fifth and sixth sentences of section 32(3)(1) of this Act, admission of applicants who are Germans within the meaning of Article 116 of the Basic Law may not be made contingent on the particular *Land* in the Federal Republic of Germany in which they were born, in which they or their family reside or in which they obtained their qualifications for entry into higher education.

### **Chapter 3**

#### **Members of the Institutions of Higher Education**

##### Part 1

##### Membership and Participation

### **Section 36**

#### **Membership**

(1) The members of an institution of higher education shall comprise the staff primarily employed by the institution, excluding those employed on a temporary basis or as guests, and the enrolled students. The status of other staff employed by the institution, of honorary citizens and of honorary senators shall be regulated by *Land* law.

(2) After retirement, professors shall be entitled to exercise the rights conferred by the teaching licence (*Lehrbefugnis*) to take classes and to participate in examination procedures.

### **Section 37**

#### **Basic principles of co-determination**

(1) It is the right and the duty of all members of an institution of higher education to participate in the institution's administration of its own affairs. The nature and extent of co-determination by the various groups of members and within the individual groups shall vary according to the members' qualifications, function and responsibility and how directly the matter under consideration in question affects them. On the various bodies constituted on the basis of group membership, professors and junior professors, other academic teaching staff, the students and the non-academic staff shall each be represented as a group; all groups of members must be represented, shall participate in decision-making, subject to the provisions of the second sentence above, and shall, in principle, have the right to vote. *Land* law shall regulate the membership status of other staff employed by the institution. On bodies which are constituted on the basis of group membership and have decision-making powers, the professors shall have at least half of the votes in the case of decisions on teaching other than those concerning the appraisal of teaching, and they shall have the majority of the votes in the case of decisions directly affecting research, artistic-development projects or the appointment of teaching staff.

(2) With the exception of *ex officio* members, the members of the various bodies of an institution shall be appointed or elected for a certain term of office; they shall not be bound by any instructions. Efforts shall be made to ensure equitable representation of women and men.

(3) Members shall not suffer any discrimination on account of their participation in the institution's administration of its own affairs.

**Sections 38 to 40**

(repealed)

**Section 41****General student council**

(1) *Land* law can provide that general councils of the student body shall be constituted at the institutions of higher education; their tasks shall be to safeguard the students' academic, social and cultural interests, to cultivate supraregional and international student relations, and to safeguard student interests in the fulfilment of the functions of institutions of higher education as enumerated in sections 2 and 3 of this Act.

(2) If a general student council is constituted, it shall administer its own affairs within the framework of the law. It may levy financial contributions from its members for the fulfilment of its tasks. The council's budget and economic management shall be audited by the Audit Office of the *Land* concerned. The general student council is subject to supervision by the principal or governing board of the institution and the competent *Land* authority.

(3) Section 37(3) of this Act shall apply, *mutatis mutandis*, to participation in the activities of constituent bodies of the general student council.

## Part 2

## Academic and artistic staff

**Section 42****Academic and artistic staff primarily employed by an institution of higher education**

The academic and artistic staff primarily employed by an institution of higher education shall comprise in particular the professors and junior professors, the research and art staff and the teaching staff for special duties. With a view to achieving equal rights for women and men, the advancement of women shall be promoted, with due consideration for the primacy of aptitude, qualifications and professional achievements pursuant to Article 33(2) of the Basic Law. The main purpose of promoting the advancement of women shall be to increase the number of women in academic life.

**Section 43****Official duties of professors and junior professors**

Professors and junior professors shall, on their own responsibility, perform the duties incumbent upon their respective institutions in the domains of the arts and sciences, research, teaching and continuing education in accordance with their specific terms of employment.

**Section 44****Conditions governing the appointment of professors**

In addition to the general conditions laid down in service regulations, appointment to a professorship shall be subject to fulfilment of the following general requirements:

1. a degree earned at an institution of higher education,
2. teaching ability,

3. special aptitude for research work, normally attested by the quality of a doctorate, or special aptitude for artistic work, and,
4. in addition to the above, depending on the requirements of the post in question,
  - (a) additional academic achievements,
  - (b) additional artistic achievements, or
  - (c) particular achievements with regard to the application or development of scientific findings and methods in several years of professional activity.

#### **Section 45**

#### **Advertisement of vacancies for professors and junior professors**

Vacancies for professors and junior professors at institutions of higher education shall be advertised publicly and, as a rule, internationally. *Land* legislation may provide for exceptions to the requirement for public advertisement, particularly if a junior professor is to be appointed to a professorial post.

#### **Section 46**

#### **Employment status of professors**

Professors appointed as civil servants (*Beamte*) shall be assigned the status of civil servants with either limited or unlimited tenure; a probationary period may be prescribed by law.

#### **Section 47**

#### **Conditions governing the appointment of junior professors**

In addition to the general conditions laid down in service regulations, appointment to a junior professorship shall be subject to fulfilment of the following general requirements:

1. a degree earned at an institution of higher education,
2. teaching ability,
3. special aptitude for research work, normally attested by the outstanding quality of a doctorate.

In cases where a candidate, before or after obtaining his or her doctorate, has worked as a research assistant, the total duration of the period of doctoral study plus the period worked as a research assistant shall not have exceeded six years or, in the field of medicine, nine years. Extensions granted under the first sentence of section 57b(4), items 1, 3, 4 and 5, shall not be counted as part of this period. The first sentence of section 57b(2) shall apply, *mutatis mutandis*.

#### **Section 48**

#### **Employment status of junior professors**

(1) Employment of junior professors shall comprise two phases which together should not exceed a period of six years. The tenure of a junior professor shall be extended for the second phase of employment if he or she has proved effective as a teacher in higher education; otherwise, the tenure may be extended for up to one year.

(2) Unless otherwise provided in this Act, the provisions pertaining to civil servants with unlimited tenure (*Beamte auf Lebenszeit*) shall apply, *mutatis mutandis*, to junior professors who have been appointed as civil servants with limited tenure (*Beamte auf Zeit*).

**Sections 48a to 48d**

(repealed)

**Section 49****Application of the provisions of the Civil Service Framework Act**

Unless otherwise provided by the present Act, the provisions of the Civil Service Framework Act (*Beamtenrechtsrahmengesetz*) shall apply to professors, junior professors and research and art staff who have the status of civil servants.

**Section 50****Special service regulations**

(1) The provisions of the Civil Service Framework Act concerning careers and non-active status shall not apply to professors or junior professors. The provisions concerning probationary periods shall apply only to the cases covered by the second clause of section 46 of the present Act. With the exception of sections 44a and 44b of the Civil Service Framework Act, the provisions on working hours contained in the latter Act shall not apply to professors and junior professors; if, however, the tasks of a unit within an institution of higher education require certain persons to be present regularly or according to a specific schedule, the aforementioned provisions may be declared applicable to certain groups of civil servants; the provisions pertaining to forfeiture of pay for culpable unauthorized absence shall apply.

(2) Professors and junior professors who are civil servants may not be seconded or transferred without their consent. They may, however, be seconded or transferred to an equivalent post at another institution of higher education without their consent if the institution or institutional unit at which they are employed is dissolved or merged with another institution or if the subject they are teaching is wholly or partly abandoned or transferred to another institution; in such cases the receiving institution or institutional unit shall play only a consultative role in the appointment procedure.

(3) Where professors, junior professors, research staff and art staff are civil servants with limited tenure, their period of tenure shall be extended at their request unless there are official reasons to the contrary; such extension shall be granted in accordance with the special provisions of *Land* legislation, particularly in cases of prohibition of employment under maternity protection law, parental leave as well as leave or reduced working hours granted for the provision of care or nursing assistance for a child under 18 years of age or for another dependent relative.

(4) Where professors and junior professors have the status of public employees on fixed-term contracts, paragraph 3 above shall apply, *mutatis mutandis*.

**Section 51**

(repealed)

**Section 52**

(repealed)

**Section 53**  
**Research and art staff**

(1) Research staff (*wissenschaftliche Mitarbeiter/Mitarbeiterinnen*) are those civil servants and public employees who are under an obligation to render services of an academic nature. In the field of medicine, such services shall include health care. In substantiated cases, responsibility for the autonomous performance of research and teaching functions may be delegated to research staff.

(2) Where research staff employed for a fixed term are entrusted with tasks which, among other things, are conducive to the preparation of a doctorate or to the provision of additional academic services, they shall be given sufficient opportunity to engage in their own academic work within the framework of their official duties.

(3) Besides compliance with the general criteria laid down in service regulations, the prerequisite for the employment of research staff shall normally be a degree from an institution of higher education.

(4) Paragraphs 1 and 2 above shall apply, *mutatis mutandis*, to art staff (*künstlerische Mitarbeiter/Mitarbeiterinnen*).

**Section 54**

(repealed)

**Section 55**

**Contract teachers**

In order to supplement the programme of courses, other persons may be contracted to teach specific classes. At colleges of art, teaching contracts may be awarded in order to guarantee the implementation of the programme of courses in a particular discipline. Such persons, who are known as contract teachers (*Lehrbeauftragte*), shall perform the teaching duties assigned to them on their own responsibility. They shall be paid for their services; an exception shall be made in cases where contract teachers waive their right to remuneration or where the workload of persons primarily employed in the public service has been duly adjusted to allow for such teaching duties.

**Section 56**

**Teaching staff for special tasks**

Where the main purpose of a teaching assignment is to impart practical skills and knowledge for which the recruitment criteria for professors and junior professors need not be fulfilled, such assignments may be delegated to teaching staff for special tasks (*Lehrkräfte für besondere Aufgaben*) who are primarily employed at the institution of higher education.

**Section 57**

(repealed)

### **Section 57a**

#### **Limitation of the term of employment contracts**

(1) Sections 57b and 57c of this Act shall apply to employment contracts concluded for a limited period (fixed-term contracts) with research and art staff and with academic and artistic auxiliaries. No arrangement may be made which derogates from these provisions. For certain disciplines and research fields, a collective agreement on pay and conditions may derogate from the time limits prescribed in section 57b and may stipulate the permissible number of extensions to fixed-term contracts. Within the area of application of such a collective agreement, parties not bound by the collective agreement may agree to comply with its provisions. The provisions and principles of labour legislation governing fixed-term contracts and their termination shall be applied only to the extent that they are not inconsistent with the provisions of this Act.

(2) The above shall apply without prejudice to the right of the institution to conclude employment contracts of unlimited duration with the staff referred to in paragraph 1 above.

### **Section 57b**

#### **Duration of fixed terms**

(1) The limitation of the term of employment contracts that are concluded with the staff referred to in the first sentence of section 57a(1) of this Act who do not possess a doctorate is permissible up to a period of six years. After the attainment of a doctorate, limitation is permissible up to a period of six years or, in the field of medicine, nine years; the permissible duration of fixed terms shall be extended by the period by which the time spent in the fixed-term employment referred to in the first sentence above plus the time spent studying for a doctorate without employment on the conditions described in the first sentence above fall short of an aggregate period of six years. A fixed-term employment contract with an auxiliary researcher or artist may be concluded for an aggregate period of up to four years on the conditions described in the first and second sentences above. A fixed-term contract may also be extended, provided that the relevant permissible aggregate duration is not exceeded.

(2) All periods of employment involving the performance of duties for more than one quarter of normal working hours under fixed-term contracts concluded with a German institution of higher education or research establishment within the meaning of section 57d of this Act as well as corresponding fixed-term employment as a civil servant with limited tenure (*Beamter/Beamtin auf Zeit*) and employment under private service contracts within the meaning of section 57c shall be counted towards the permissible duration of fixed terms laid down in paragraph 1 above. The duration of fixed-term contracts concluded in accordance with other legal provisions shall also be counted towards the permissible aggregate period. Once the entire duration of fixed contractual terms that is permissible under the present Act has been exhausted, any further extension of a fixed-term contract can only be justified by the provisions of the Part-time and Fixed-Term Employment Act (*Teilzeit- und Befristungsgesetz*).

(3) The employment contract shall state whether the limitation of the contract to a fixed term is based on the provisions of this Act. If this is not stated, the limitation cannot be based on the provisions of this Act. The exact duration of the contractual term must be specified or specifiable in terms of calendar dates.

(4) The duration of each fixed-term employment contract concluded under paragraph 1 above shall be extended by agreement with the staff member to make allowance for

1. periods of leave or of reduced working hours (reduction by at least one fifth of regular working hours) that have been granted for the provision of care or nursing assistance for a child under 18 years of age or for another dependent relative,
2. periods of leave granted for academic or artistic work or for academic, artistic or professional training or development outside the higher-education sector or abroad,
3. periods of leave granted under the Federal Child-raising Benefit Act (*Bundeserziehungsgeldgesetz*) and periods during which employment is prohibited under sections 3, 4, 6 and 8 of the Maternity Protection Act (*Mutterschutzgesetz*), to the extent that the staff member did not perform remunerative work,
4. periods of military service or alternative civilian service, and
5. periods of release from work for at least one fifth of regular working hours for the performance of tasks within a representative body for staff or disabled persons, for the performance of tasks referred to in section 3 of this Act or for the exercise of a mandate compatible with the staff member's employment contract.

An extension pursuant to the first sentence above shall not be counted towards the permissible duration of a fixed term. In each of the cases referred to in items 1, 2 and 5 of the first sentence above, a duration of two years may not be exceeded.

#### **Section 57c**

##### **Private service contract**

Sections 57a, 57b and 57e of this Act shall apply, *mutatis mutandis*, to a fixed-term contract which a member of an institution of higher education who performs tasks of that institution on his or her own responsibility concludes with a staff member as defined in the first sentence of section 57a(1) who is paid from funds provided by third parties to assist the member of the institution in the fulfilment of those tasks.

#### **Section 57d**

##### **Scientists at research establishments**

Sections 57a to 57c and section 57e of this Act shall apply, *mutatis mutandis*, to the conclusion of fixed-term employment contracts with scientists at government research establishments as well as at research establishments which receive primarily government funding or are financed on the basis of Article 91b of the Basic Law.

#### **Section 57e**

##### **Student auxiliaries**

Employment contracts concluded with auxiliaries who are enrolled as students at a German institution of higher education (student auxiliaries) may be limited to a fixed term of up to four years. Time spent in employment as a student auxiliary shall not be counted towards the permissible duration of fixed terms laid down in section 57b(1) of this Act.

#### **Section 57f**

##### **Date of first application**

(1) Sections 57a to 57e of this Act, as amended on 31 December 2004, shall apply to employment contracts concluded on or after 23 February 2002. In the case of employment contracts concluded before 23 February 2002, the version of sections 57a to 57e that applied before 23 February 2002 shall continue to apply at state and state-recognized institutions of higher education and at the research establishments defined in

section 57d. The second sentence above shall apply, *mutatis mutandis*, to employment contracts concluded between 27 July 2004 and 31 December 2004.

(2) The conclusion of fixed-term contracts of the type referred to in the first and second sentences of section 57b(1) of this Act with persons who, prior to 23 February 2002, had a fixed-term employment contract with an institution of higher education, with a member of such an institution within the meaning of section 57c or with a research establishment within the meaning of section 57d shall, on expiry of the applicable fixed term as regulated in the first and second sentences of section 57b(1), be permissible for a period ending no later than 29 February 2008. The first sentence above shall apply, *mutatis mutandis*, to persons who, prior to 23 February 2002, were employed as teaching/research or art assistants. The provisions of section 57b(4) shall apply, *mutatis mutandis*.

(3) The conclusion of fixed-term contracts of the type referred to in the first sentence of section 57e of this Act with persons who, prior to the entry into force of the Fifth Act Amending the Framework Act for Higher Education and Other Provisions on 23 February 2002, had a fixed-term employment contract of the type referred to in the first sentence of section 57e shall, on expiry of the applicable fixed term as regulated in the first sentence of section 57e, be permissible for a period ending no later than 28 February 2003.

## **Chapter 4**

### **Legal Status of the Institutions of Higher Education**

#### **Section 58**

##### **Legal form and self-administration**

(1) Institutions of higher education shall normally be bodies corporate under public law and at the same time state institutions. They may also be established in another legal form. Within the framework of the law, they shall have the right of self-administration.

(2) The institutions of higher education shall give themselves basic constitutions, which shall require the approval of the relevant *Land*. The grounds on which approval may be denied shall be determined by law.

#### **Section 59**

##### **Supervision**

Legal supervision shall be exercised by the *Land*. The instruments for exercising this supervision shall be determined by law. More extensive supervision shall be provided by law where institutions of higher education perform public duties.

#### **Sections 60 to 69**

(repealed)

## **Chapter 5**

### **State Recognition**

#### **Section 70**

##### **Recognition of institutions**

(1) An educational institution which is not a state institution pursuant to *Land* law may be granted the status of a state-recognized institution of higher education in accordance with provisions of *Land* law if it is ensured that

1. its courses of study are designed to achieve the purpose defined in section 7 above,
2. a variety of parallel or sequential courses of study are offered at the institution or in conjunction with other educational institutions or are included in plans for future development; this proviso shall not apply when the introduction of a variety of courses of study within a particular discipline is not warranted by scientific development or by the situation in the relevant field of professional activity,
3. the applicants fulfil the requirements for admission to a corresponding state institution of higher education,
4. the full-time teaching staff fulfil the requirements for appointment to a corresponding post at a state institution of higher education, and
5. the members of the institution participate in the organization of studies in accordance with the principles applicable to state institutions, *mutatis mutandis*.

(2) For ecclesiastical institutions, exemptions may be granted pursuant to the provisions of *Land* law if their courses of study are demonstrably equivalent to courses at a state institution of higher education.

(3) A state-recognized institution may hold academic examinations and award academic degrees in accordance with the provisions of *Land* law. Graduates of a state-recognized institution shall be graduates within the meaning of this Act.

(4) Members of state-recognized institutions of higher education may be involved in the coordination of study and examination regulations (section 9 of this Act). Upon request, a state-recognized institution shall be included in the centralized procedure for the allocation of places on courses of study (section 31).

(5) Sections 57a to 57f shall apply, *mutatis mutandis*, to state-recognized institutions of higher education.

#### **Section 71**

##### **Equivalence of degrees from the training college for notaries**

Degrees from the training college for notaries of *Land* Baden-Württemberg may be accorded equal status with degrees awarded on completion of a comparable course of study at a state institution of higher education.

## Chapter 6

### Adjustment of *Land* Legislation

#### Section 72

##### Adjustment deadlines

(1) Within three years of the entry into force of this Act as adopted on 26 January 1976 (BGBl. I, p. 185), *Land* legislation corresponding to the provisions of Chapters 1 to 5 shall be enacted. Within two years of the entry into force of the Third Act Amending the Framework Act for Higher Education, adopted on 14 November 1985 (BGBl. I, p. 2090), *Land* legislation corresponding to the provisions of Article 1(1) to (42) of the said Act shall be enacted. Within three years of the date on which accession took effect, *Land* legislation corresponding to the provisions of the present Act, as amended on 3 October 1990, shall be enacted in the *Länder* referred to in Article 1(1) of the Unification Treaty and in that part of *Land* Berlin to which the Basic Law had previously not been applicable. In the *Länder* referred to in Article 1(1) of the Unification Treaty and in that part of *Land* Berlin to which the Basic Law had previously not been applicable, *Land* legislation corresponding to the provisions of Article 1(1) and (3) of the Act Regulating the Extension of Fixed-term Employment Contracts Concluded with Research Staff and with Physicians Undergoing Further Training (*Gesetz über die Verlängerung von befristeten Dienst- und Arbeitsverhältnissen mit wissenschaftlichem Personal sowie mit Ärztinnen und Ärzten in der Weiterbildung*) of 15 December 1990 (BGBl. I, p. 2806) shall be enacted within three years of the date on which the accession took effect; in all other cases, corresponding *Land* legislation shall be enacted within two years of the entry into force of the Act of 15 December 1990. Within three years of the entry into force of the Public Service Law Reform Act (*Gesetz zur Reform des öffentlichen Dienstrechts*) of 24 February 1997 (BGBl. I, p. 322), *Land* legislation corresponding to the provisions of Article 12(3) of the said Act shall be enacted. Within three years of the entry into force of the Fourth Act Amending the Framework Act for Higher Education, adopted on 20 August 1998 (BGBl. I, p. 2190), *Land* legislation corresponding to the provisions of Article 1 of the said Act shall be enacted. Within three years of the entry into force of the Sixth Act Amending the Framework Act for Higher Education, adopted on 8 August 2002 (BGBl. I, p. 3138), *Land* legislation corresponding to the provisions of Article 1 of the said Act shall be enacted. Within three years of the entry into force of the Seventh Act Amending the Framework Act for Higher Education, adopted on 28 August 2004 (BGBl. I p. 2298), *Land* legislation corresponding to the provisions of Article 1 of the said Act shall be enacted. Within two years of the entry into force of the Act Amending Employment Law in Higher Education of 27 December 2004 (BGBl. I, p. 3835), *Land* legislation corresponding to the provisions of Article 1 of the said Act shall be enacted. The provisions of sections 9, 57a to 57f and 70(5) of the present Act shall apply directly.

(2) The *Länder* shall be under an obligation to adjust their legislation governing admission to higher education simultaneously in accordance with the framework provisions of sections 29 to 35 of this Act. The provisions of Articles 7 to 16 of the Inter-*Länder* Agreement of 24 June 1999 on the Allocation of University and College Places (*Staatsvertrag über die Vergabe von Studienplätzen*) shall apply for the first time, in accordance with the provisions of section 30(3), section 31(3), section 32(3) and (4), section 34 and section 35 of the present Act, as amended on 4 September 2004, to admissions for the 2005/2006 winter semester but shall cease to apply no later than the date of entry into force of the *Land* legislation referred to in the first sentence above. The *Länder* shall adopt the requisite transitional provisions. The supplementary provisions to be adopted by the *Länder* under the first to the third sentences above must be congruent to the extent necessary for the central allocation of places on courses of study.

### **Section 73**

#### **Derogations**

(1) *Land* legislation may derogate from the provisions of this Act for institutions whose courses lie exclusively within the domain of continuing education and for institutions where student numbers are low because of the nature of the subjects taught, provided that the specific structure and role of such institutions warrant such derogations.

(2) *Land* legislation may derogate from the provisions of this Act for state institutions which exclusively train students for civil-service careers, provided that the specific structure and functions of such institutions warrant such derogations. The requirements specified in section 70(1), items 1 to 3 and 5 of this Act must be fulfilled.

### **Section 74**

#### **Pre-existing incumbency of posts and agreements concluded on appointment**

(1) The teaching/research assistants and art assistants (*wissenschaftliche Assistentinnen* and *Assistenten* and *künstlerische Assistentinnen* and *Assistenten*<sup>\*</sup>), senior assistants (*Oberassistentinnen* and *Oberassistenten*), senior engineers (*Oberingenieurinnen* and *Oberingenieure*) and lecturers (*Hochschuldozentinnen* and *Hochschuldozenten*) who were in post on the entry into force of the *Land* legislation enacted pursuant to the ninth sentence of section 72(1) shall remain in their existing posts. Their status as members of their institution of higher education shall remain unaltered.

(2) Where agreements concluded on the appointment of professors relating to the human and material resources at their disposal are affected by amendments to Chapter 3, Part 2, of this Act, they shall be adapted to the new legal position, due consideration being given to the interests of both parties.

### **Sections 75 and 75a**

(repealed)

### **Section 76**

#### **Retention of professorial rights on retirement**

(1) The provisions of this Act shall apply without prejudice to the right of full professors (*ordentliche Professoren*) and associate professors (*außerordentliche Professoren*) who were in post on the day before the entry into force of the legislation enacted pursuant to the first sentence of section 72(1) of this Act to retire on reaching pensionable age; this shall also apply if they change their employer. In such cases, emoluments accruing after retirement and pension benefits for surviving dependants shall be paid on the basis of the civil-service law and pay regulations that applied on the day before the entry into force of the legislation enacted pursuant to the first sentence of section 72(1). The basis for the determination of these emoluments or benefits shall be the basic salary that could have been payable by virtue of seniority at the time of retirement. Article VII(1)(1) and (1)(2) of the Second Act on the Unification and Reorganization of Pay Regulations for Public Servants of the Federal Republic of Germany and its Constituent States (*Zweites Gesetz zur Vereinheitlichung und Neuregelung des Besoldungsrechts in Bund und Ländern*) of 23 May 1975 (BGBl. I, p. 1173), as amended by the Budget Structure Act (*Haushaltsstrukturgesetz*) of 18 December 1975 (BGBl. I, p. 3091) shall apply, *mutatis mutandis*.

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\* Translator's footnote: In contrast to the versions of this Act adopted prior to 2002, the German original now specifies both the feminine and masculine forms of each job title wherever separate forms exist.

(2) At the request of the professor concerned, paragraph 1 above shall not apply. The request may only be made before the professor retires. If the professor dies before retirement without having submitted the request referred to in the first and second sentences above, pension benefits payable to his or her surviving dependants shall be calculated on the basis of the professor's last grade on the civil-service pay scale.

(3) The provisions of this Act shall be without prejudice to the legal status of civil servants within the meaning of Chapter I, Part V, Title 3, of the Civil Service Framework Act (*Beamtenrechtsrahmengesetz*), as amended, who retire or were retired from professorial duties on the day before the entry into force of the legislation enacted pursuant to the first sentence of section 72(1) of this Act and of the surviving dependants of these civil servants who are entitled to pension benefits.

(4) Paragraphs 1 and 2 above shall apply, *mutatis mutandis*, to professors employed under private contracts at the institutions of higher education of the German Federal Armed Forces (*Hochschulen der Bundeswehr*) who resigned their posts as full or associate professors in the *Land* civil service in order to take up the post at the institution of higher education of the Federal Armed Forces and who, after the entry into force of the present Act, have taken up a civil-service position corresponding to their post at an institution of higher education of the German Federal Armed Forces. The emoluments referred to in the second sentence of paragraph 1 above shall be determined by the civil-service law and pay regulations that applied on the date of their resignation as professors in the *Land* civil service.

#### **Section 76a**

##### **Transitional provisions for university/college assistants**

The pertinent provisions of the Framework Act for Higher Education, the Civil Service Framework Act (*Beamtenrechtsrahmengesetz*), of the Federal Civil Service Act (*Bundesbeamtengesetz*) and of the Civil Service Benefits Act (*Beamtenversorgungsgesetz*), as amended up to 22 November 1985, shall apply to the university/college assistants (*Hochschulassistenten*) who are in post on the date of entry into force of the legislation enacted pursuant to the second sentence of section 72(1).

### **Chapter 7**

#### **Amendment of Federal Acts, Final Provisions**

##### **Sections 77 to 80**

(Amendment of Legal Provisions)

##### **Section 81**

##### **Agreements with the Churches**

The agreements concluded with the Churches shall not be affected by this Act.

##### **Section 82**

(repealed)

##### **Section 83**

(Entry into force)