

## Legal provisions in English translation

### Basic Law for the Federal Republic of Germany (excerpts)

#### Art. 1(3)

The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

#### Art. 19(4)

Should any person's rights be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts...

#### Art. 20(3)

The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.

#### Art. 45b

A Parliamentary Commissioner for the Armed Forces shall be appointed to safeguard basic rights and to assist the Bundestag in exercising parliamentary oversight over the Armed Forces. Details shall be regulated by a federal law.

#### Art. 83

The Länder shall execute federal laws in their own right insofar as this Basic Law does not otherwise provide or permit.

#### Art. 84

(1) Where the Länder execute federal laws in their own right, ...

(3) The Federal Government shall exercise oversight to ensure that the Länder execute federal laws in accordance with the law. For this purpose the Federal Government may send commissioners to the highest Land authorities and, with their consent or, where such consent is refused, with the consent of the Bundesrat, also to subordinate authorities.

(4) Should any deficiencies that the Federal Government has identified in the execution of federal laws in the Länder not be corrected, the Bundesrat, on application of the Federal Government or of the Land concerned, shall decide whether that Land has violated the law. The decision of the Bundesrat may be challenged in the Federal Constitutional Court. ...

#### Art. 85

(1) Where the Länder execute federal laws on federal commission, ...

(3) The Land authorities shall be subject to instructions from the competent highest federal authorities. Such instructions shall be addressed to the highest Land authorities unless the Federal Government considers the matter urgent. Implementation of the instructions shall be ensured by the highest Land authorities.

(4) Federal oversight shall extend to the legality and appropriateness of execution. For this purpose the Federal Government may require the submission of reports and documents and send commissioners to all authorities.

#### Art. 114(2)

The Federal Court of Auditors whose Members shall enjoy judicial independence shall audit the accounts and examines the management of the budget and the conduct of business as to economy and correctness. ... In addition to the Federal Government, it shall annually report directly to the Bundestag and the Bundesrat [Federal Council]. In all other respects, the powers of the Federal Court of Auditors shall be determined by federal legislation.

## **Code of Administrative Court Procedure (excerpts)**

### Sect. 40(1)

Recourse to the administrative courts shall be available in all public-law disputes of a non-constitutional nature insofar as the disputes are not explicitly allocated to another court by a federal statute. ...

### Section 42

(1) The annulment of an administrative act (action for annulment), as well as sentencing to issue a rejected or omitted administrative act (action for the issue of an administrative act) can be requested by means of an action.

(2) Unless otherwise provided by law, the action shall only be admissible if the plaintiff claims that his rights have been violated by the administrative act or its refusal or omission.

### Section 43

(1) The establishment of the existence or non-existence of a legal relationship or of the nullity of an administrative act may be requested by means of an action if the plaintiff has a justified interest in the establishment being made soon (declaratory action).

(2) The establishment cannot be requested insofar as the plaintiff may pursue or could have pursued his/her rights by reformatory action or application for an injunction. This shall not apply if the establishment of the nullity of an administrative act is requested

### Sect. 68

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

1. the administrative act has been handed down by a supreme federal authority or by a supreme Land authority, unless a statute prescribes the review, or
2. the remedial notice or the ruling on an objection contains a grievance for the first time.

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

### Sect. 69

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

### Sect. 70

(1) The objection shall be lodged in writing within one month after the administrative act has been announced to the aggrieved party, in writing or for the record of the authority which has carried out the administrative act. ...

### Sect. 72

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

### Sect. 73

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

1. the next higher authority unless another higher authority is determined by law,
2. if the next higher authority is a federal or supreme Land authority, the authority which has issued the administrative act,
3. in self-administration matters the self-administration authority unless otherwise determined by law. ...

(3) The ruling on an objection shall be reasoned, supplemented with a notice on appeals and served. ...

### Sect. 80(1)

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

(2) The suspensive effect shall only fail to apply

1. if public charges and costs are called for,
2. with non-postponable orders and measures by police enforcement officers,
3. in other cases prescribed by a federal statute or for Land law by Land statute ...
4. in cases in which immediate execution is separately ordered by the authority which has issued the administrative act or has to decide on the objection in the public interest or in the overriding interest of a party concerned. ...

(5) On request, the court dealing with the main case may completely or partly order the suspensive effect in cases falling under subsection 2 Nos. 1 to 3, and may reconstitute it completely or partly in cases falling under subsection 2 No. 4. The request shall already be admissible prior to filing of the action for annulment. ...

## **Federal Court of Auditors Act (excerpts)**

### Sect. 1

The Federal Court of Auditors shall be a supreme federal authority and as an independent institution of government audit shall be subject only to the law. Within the scope of its statutory functions, the Federal Court of Auditors shall provide assistance to the Federal Parliament and the Federal Government in their decision making procedure.

## **Federal Budget Code (excerpts)**

### Sect. 90 Substance of Audit

The audit shall examine whether the regulations and principles of adequate financial management have been observed, and in particular whether

1. the Budget Act and the adopted Estimates have been adhered to,
2. receipts and payments have been properly substantiated and supported by vouchers, and whether both the budget and capital accounts have been properly prepared,
3. funds are administered efficiently and economically,
4. functions might be performed with fewer human or material resources, or more effectively by other means.

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