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Social Legislation in the Federal Republic of Germany

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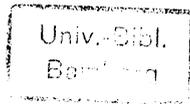
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Erratum

An error has occurred in the figures regarding the length of time for which unemployment benefits are paid (p. 37, second paragraph of 10.2.3, following 'These amount to . . . net income.').

According to the law applicable before December 1982 unemployment benefits were paid for a minimum of three months and a maximum of twelve months depending on the duration of the previous insurance. The minimum length of payment depended on whether the employee had been employed for at least six months in work requiring insurance during the three years prior to the date on which he was registered as unemployed. The maximum length of payment depended on whether the employee had been employed for at least 24 months in work requiring insurance during the three years prior to the date on which he was registered as unemployed.

In December 1982 the legal provisions were modified as follows: Payment of unemployment benefits depends on how long the employee has been employed in work requiring insurance during the years prior to the date on which he is registered as unemployed. Unemployment benefits are paid for a minimum of four months and a maximum of twelve months. For the minimum of four months the employee must have been employed for at least twelve months in work requiring insurance during the three years prior to the date on which he is registered as unemployed. For the maximum of twelve months he must have been employed for at least 36 months in work requiring insurance during the four years prior to the date on which he is registered as unemployed. Between the minimum length and the maximum length of payment three further gradations may be found.

Preface

This book is designed for English-speaking readers who are interested in the social policy of the Federal Republic of Germany (FRG) and sets out the legal framework of social provision.

The two authors had similar reasons for undertaking this work. Hans F. Zacher, as director of the Max Planck Institute for Foreign and International Social Law in Munich, had a particular interest in promoting co-operative work with foreign visitors by providing a brief account of German social legislation. Rosalind Brooke Ross, from her experience in England as a lecturer and research worker concerned with law and social policy, saw the need for such an account of German social law.

The first draft came from Hans F. Zacher. It was written not only in German, but also from the German standpoint. The work of translation therefore involved two phases. The first phase was to translate into English, and this work was undertaken by Greta Dobin (London). In the second phase, the two authors – by intensive discussion and co-operation – sought to amplify the content in order to take account of the expectations of foreign readers. In some instances information was added which would not have perhaps been necessary in the German text.

We would like to thank Eva Lutz who checked the English text after completion. Further we would like to thank Martina Jüngst and Thomas Ziegler who helped us to draw up the table of statutes and regulations and the bibliography.

Since this is the first attempt to produce a brief, but comprehensive document designed to provide basic information about social legislation in FRG in English, it can, no doubt, be improved. The authors would be most grateful to receive any criticism. Since social legislation is always changing, it will be necessary to bring this document up to date. The more comments the authors receive the more they will be in a position not only to bring information on legislation up to date but to improve the text in the interests of English-speaking readers.

Munich/London, October 1982

Hans F. Zacher

Rosalind Brooke Ross

Table of Statutes and Regulations

RGB1. = Reichsgesetzblatt = the official journal of the German Reich for publishing Acts and Regulations

BGB1. = Bundesgesetzblatt = the official journal of the Federal Republic of Germany for publishing Acts and Regulations

In the official reference to an Act the I refers to the section of the official journals followed by the page number(s). The date refers to the day of publication; further dates indicate a newly published version which includes earlier amendments.

Acts in the social field are often changed. Consequently, sources quoted give a valid version only in the case of 'very new' Acts. The currently valid text can be found only in the relevant collection of Acts: F. *Luber*, *Deutsche Sozialgesetze*, 3 Bände (loose leaf); F. *Aichberger*, *Sozialgesetzbuch*, *Reichsversicherungsordnung* (loose leaf).

Current number	German full and abbreviated titles of Acts and Regulations	English translation of German Acts and Regulations
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Sozialgesetzbuch

Social Code

1	Sozialgesetzbuch (SGB) – Allgemeiner Teil vom 11.12.1975, BGB1. I, S. 3015	Social Code – General Section
2	Sozialgesetzbuch (SGB) – IV. Buch, Sozialversicherung 1. Kapitel Allgemeine Vorschriften für die Sozialversicherung v. 23.12.1976, BGB1. S. 3845	Social Code – General rules for social insurance
3	Sozialgesetzbuch (SGB) – X. Buch, Verwaltungsverfahren, Schutz der Sozialdaten, Zusammenarbeit der Leistungsträger und ihre Beziehungen zu Dritten vom 4.11.1982, BGB1.I, S. 1450	Social Code – Rules relating to administrative procedure, protection of social data, the collaboration of the executive bodies and their relationship to third parties (SGB X)

Sozialversicherung

Social Insurance

Krankenversicherung

Health Insurance

- | | | |
|---|--|--|
| 4 | 2. Buch der Reichsversicherungsordnung (RVO) vom 19.7.1911, RGBl. S. 509 in der Fassung vom 15.12.1924, RGBl. I, S. 779 | Second part of the Reich's Insurance Code |
| 5 | Gesetz über die Fortzahlung des Arbeitsentgeltes im Krankheitsfalle (Lohnfortzahlungsgesetz – LFZG) vom 27.7.1969, BGBl. I, S. 946 | Act to ensure the continued payment of remuneration in the event of sickness (Continued Payment of Remuneration Act) |
| 6 | Gesetz zur Weiterentwicklung des Rechts der gesetzlichen Krankenversicherung (Gesetz über die Krankenversicherung der Landwirte – KVLG) v. 10.8.1972, BGBl. I, S. 1433 | Act relating to further development of health insurance (Health Insurance for Farmers Act) |

Unfallversicherung

Accident Insurance

- | | | |
|---|---|--|
| 7 | 3. Buch der Reichsversicherungsordnung (RVO) v. 19.7.1911, RGBl. S. 509 in der Fassung vom 15.12.1924, RGBl. I, S. 779 | Third part of the Reich's Insurance Code |
| 8 | Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit (BetrÄG) v. 12.12.1973, BGBl. I, S. 1885 | Act relating to medical services, safety engineers and other specialists for health and safety in employment |

Rentenversicherung

Pension Insurance

- | | | |
|----|--|---|
| 9 | 4. Buch der Reichsversicherungsordnung (RVO) v. 19.7.1911, RGBl. S. 509 i.d.F. vom 1.7.1924, RGBl. I, S. 779 | Fourth part of the Reich's Insurance Code |
| 10 | Reichsknappschaftsgesetz (RKG) vom 23.6.1923, RGBl. I, S. 431 i.d.F. vom 1.7.1926, RGBl. I, S. 369 | Reich's Miners' Insurance Act |

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|----|---|------------------------------------|
| 11 | Angestelltenversicherungsgesetz (AVG) v. 20.12.1911, RGBl. S. 989 i.d.F. vom 28.5.1924, RGBl. I, S. 563 | Employees' Insurance Act |
| 12 | Gesetz über eine Altershilfe für Landwirte (GAL) v. 27.7.1957 BGBl. I, S. 1063 i.d.F. vom 14.9.1965, BGBl. I, S. 1448 | Farmers' Old Age Benefits Act |
| 13 | Gesetz über die Rentenversicherung der Handwerker (Handwerkerversicherungsgesetz – HwVG) v. 8.9.1960, BGBl. I, S. 737 | Craftsmen's Pensions Insurance Act |

Civil Servants' Non-Contributory Schemes

Beamtenversorgung

- | | | |
|----|---|------------------------------------|
| 14 | Gesetz über die Versorgung der Beamten und Richter in Bund und Ländern (Beamtenversorgungsgesetz – BeamtVG) vom 24.8.1976, BGBl. I, S. 2485, ber. S. 3839 | Craftsmen's Pensions Insurance Act |
|----|---|------------------------------------|

Arbeitsförderung

Promotion of Employment

- | | | |
|----|---|-----------------------------|
| 15 | Arbeitsförderungsgesetz (AFG) v. 25.6.1969, BGBl. I, S. 582 | Promotion of Employment Act |
|----|---|-----------------------------|

Soziale Entschädigung

Social Compensation

- | | | |
|----|---|--|
| 16 | Gesetz über die Versorgung der Opfer des Krieges (Bundesversorgungsgesetz – BVG) v. 20.12.1950, BGBl. S. 791, i.d.F. vom 22.6.1976, BGBl. S. 1633 | Federal War Victims' Compensation Act |
| 17 | Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung | Act relating to restitution for victims of National Socialist persecution (Federal Compensation Act) |

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	(Bundesentschädigungsgesetz – BEG) vom 18.9.1953, BGBl. I, S. 1387 i.d.F. des Art. I des Gesetzes vom 29.6.1956	
18	<p>Gesetz über Hilfsmassnahmen für Personen, die aus politischen Gründen ausserhalb der Bundesrepublik Deutschland in Gewahrsam genommen wurden (Häftlingshilfegesetz – HHG) vom 6.8.1955, BGBl. I S. 498 i.d.F. der Bekanntmachung vom 29.9.1969, BGBl. I, S. 1793</p>	<p>Act to provide assistance for people detained for political reasons outside the Federal Republic of Germany (Detainees Assistance Act)</p>
19	<p>Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge (Bundesvertriebenengesetz – BVFG) vom 19.5.1953, BGBl. I, S. 201 i.d.F. der Bekanntmachung vom 3.9.1971, BGBl. I, S. 1565, ber. S. 1807</p>	<p>Act concerning displaced persons and refugees (Federal Displaced Persons Act)</p>
20	<p>Gesetz über den Lastenausgleich (Lastenausgleichsgesetz – LAG) vom 14.8.1952, BGBl. I, S. 446 i.d.F. der Bekanntmachung vom 1.10.1969, BGBl. I, S. 1909</p>	<p>Act relating to equalisation of burdens</p>
21	<p>Gesetz über die Versorgung für die ehemaligen Soldaten der Bundeswehr und ihre Hinterbliebenen (Soldatenversorgungsgesetz – SVG) v. 26.7.1957, BGBl. I, S. 785 i.d.F. vom 9.10.1980, BGBl. I, S. 1957</p>	<p>Act relating to non-contributory schemes for the armed forces and dependants (Soldiers' Non-Contributory Schemes Act)</p>
22	<p>Gesetz über die Sicherung des Unterhalts der zum Wehrdienst einberufenen Wehrpflichtigen und ihrer Angehörigen (Unterhaltssicherungsgesetz – USG) v. 26.7.1957, BGBl. I, S. 1046 i.d.F. vom 9.9.1980, BGBl. I, S. 1685</p>	<p>Act relating to income maintenance for National Servicemen and their dependants (Income Maintenance Act)</p>

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- | | | |
|----|--|---|
| 23 | Gesetz über den Zivildienst der Kriegsdienstverweigerer (Zivildienstgesetz – ZDG) v. 13.1.1960, BGBl. I, S. 10 i.d.F. vom 9.8.1973, BGBl. I, S. 1015 | Act relating to National Service by conscientious objectors |
| 24 | Gesetz zur Verhütung und Bekämpfung übertragbarer Krankheiten beim Menschen (Bundes-Seuchengesetz – BSeuchG) v. 18.12.1961, BGBl. I, S. 1012, ber. S. 1300 i.d.F. vom 18.12.1979, BGBl. I, S. 2262 | Act for the prevention of infectious diseases carried by humans (Federal Epidemics Act) |
| 25 | Gesetz über die Entschädigung für Opfer von Gewalttaten (OEG) v. 11.5.1976, BGBl. I, S. 1181 | Act to compensate victims of violence |

Jugendhilfe

- | | |
|----|--|
| 26 | Gesetz über die Jugendwohlfahrt (JWG) v. 11.8.1961, BGBl. I, S. 1205, ber. S. 1875 i.d.F. vom 25.4.1977, BGBl. I, S. 633 |
|----|--|

Youth Services

Youth Welfare Act (YWA)

Unterhaltsvorschuss

- | | |
|----|---|
| 27 | Gesetz zur Sicherung des Unterhalts von Kindern alleinstehender Mütter und Väter durch Unterhaltsvorschüsse oder – ausfallleistungen (Unterhaltsvorschussgesetz) v. 23.7.1979, BGBl. I, S. 1184 |
|----|---|

Maintenance Advance

Act to ensure the maintenance of children in one-parent families by a maintenance advance or maintenance compensation (Maintenance Advance Act).

Kindergeld

- | | |
|----|---|
| 28 | Bundeskindergeldgesetz (BKGG) v. 14.4.1964, BGBl. I, S. 265 i.d.F. vom 31.1.1975, BGBl. I, S. 412 |
|----|---|

Children's Allowances

Federal Children's Allowances Act

Ausbildungsförderung Educational Promotion

- 29 Bundesgesetz über die individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz – BAFöG) vom 26.8.1971, BGBl. I, S. 1409 i.d.F. vom 9.4.1976 BGBl. I, S. 989 Federal Act relating to individual promotion of education (Federal Educational Promotion Grants Act)

Wohngeld

Housing Allowances

- 30 Wohngeldgesetz (WoGG) v. 14.12.1970, BGBl. I, S. 1637 i.d.F. vom 21.9.1980, BGBl. I, S. 1941 Housing Allowances Act

Sozialhilfe

Social Assistance

- 31 Bundessozialhilfegesetz (BSHG) v. 30.6.1961, BGBl. I, S. 815, ber. S. 1875 i.d.F. vom 13.2.1976, BGBl. I, S. 289 Federal Social Assistance Act

Recht der Behinderten

Legislation Concerning the Disabled

- 32 Gesetz zur Sicherung der Eingliederung Schwerbehinderter in Arbeit, Beruf und Gesellschaft (Schwerbehindertengesetz – SchwBG) v. 16.6.1953, BGBl. I, S. 389 i.d.F. vom 8.10.1979, BGBl. I, S. 1649 Act to ensure the integration of the disabled in working life, profession and society (Severely Disabled Persons Act)
- 33 Gesetz über die Angleichung der Leistungen zur Rehabilitation (Rehabilitationsangleichungsgesetz – RehaG) v. 7.8.1974, BGBl. I, S. 1881 Act relating to the harmonisation of rehabilitation benefits (Rehabilitation Harmonisation Act)
- 34 Gesetz über Altenheime, Altenwohnheime und Pflegeheime für Volljährige (Heimgesetz – HeimG) v. 7.8.1974, BGBl. I, S. 1873 Old People’s and Disabled Persons’ Homes and Welfare Accommodation Act (Homes Act)

TABLE OF STATUTES AND REGULATIONS

- 35 Gesetz über die Sozialversicherung Behinderter in geschützten Einrichtungen v. 7.5.1975, BGBl. I, S. 1061 Act relating to social insurance for the disabled in sheltered institutions

Rechtsschutz

Legal Protection

***Sozialgerichtliches
Verfahren***

***Procedure of Social
Courts***

- 36 Sozialgerichtsgesetz (SGG) v. 3.9.1953, BGBl. I, S. 1239 i.d.F. vom 23.9.1975, BGBl. I, S. 2535 Social Courts Act

***Verwaltungs-
gerichtliches
Verfahren***

***Procedure of
Administrative Courts***

- 37 Verwaltungsgerichtsordnung (VwGO) v. 21.1.1960 BGBl. I, S. 17 Administrative Courts Act

I General

1 Terms and Concepts*

Social legislation is regarded as law which is characterised by its socio-political aim. In this connection, 'socio-political' means in particular: the assurance of a life of human dignity for everyone, the reduction of differing levels of material conditions and the relief or control of economically determined dependence. However, this concept of social legislation is vague and, in individual cases, doubt remains as to the legal areas it covers. The key area of social legislation is *social security law*. Modern thinking identifies social legislation in the main as the right to social benefits, services and payments in kind, granted by the state and local authorities, as well as those responsible for social insurance. This results in social legislation generally being regarded as an area of public law. Basically, private law is not even thought of as part of social legislation when in addition to the usual private legal system of an exchange of services, it also protects the weaker side – as in the case of labour law, housing law, consumer protection law, etc.

In accordance with this understanding of social legislation, the *codification* project for the social code (Sozialgesetzbuch) concentrates on public social benefits. It is intended to cover the legal areas of educational maintenance grants, employment promotion (including employment insurance), social insurance, social compensation legislation (in particular war victims' schemes), children's allowances, housing allowances, children and youth services (see Part II). By the beginning of 1982, only the general section of the new code (Sozialgesetzbuch, Allgemeiner Teil, 1975), the general regulations for social insurance (gemeinsame Vorschriften für die Sozialversicherung, 1976) and the regulations for administrative procedures and protection of personal data (Verwaltungsverfahren, Schutz der sozialen Daten, 1980) had been enacted and implemented.

* H. F. Zacher, 'Was ist Sozialrecht?' i.p. *Festschrift für H. Schiek*, Percha 1978, p. 371 et seq.; H. F. Zacher, 'Sozialrecht' in: R. Weber-Fas, *Jurisprudenz. Die Rechtsdisziplinen in Einzeldarstellungen*, Stuttgart 1978, p. 407 et seq.; F. Schmid, *Sozialrecht und Recht der sozialen Sicherheit*, Schriftenreihe für Internationales und Vergleichendes Sozialrecht, Vol. 5, Berlin 1980.

2 History*

Present day social legislation has three historical roots which are still visible in the present legal system. In the nineteenth century they all assumed the shape they kept for a considerable time.

2.1 Relief for the Poor

Relief for the poor had generally been in the hands of the church and private welfare bodies since the Middle Ages. The state's main efforts were directed towards combating begging and other harmful manifestations of poverty. However, aid for the poor was also gradually improved until a comprehensive relief system was created in the nineteenth century based on local authorities and augmented by so-called voluntary welfare organisations. In 1924, the first Reich** legislation was issued regulating poor relief (*Verordnung über die Fürsorgepflicht*); it was repealed in 1961 by the Federal Social Assistance Act (*Bundessozialhilfegesetz*).

2.2 Social Insurance

Collective self-help by means of social insurance had predecessors, such as the craftsmen's guild and miners' associations, some of which date back to medieval times. Around the middle of the nineteenth century, efforts were concentrated on expanding the system of social insurance to include illness, invalidity and old age. The Reich took up the problem in an Imperial Message to the Parliament (Reichstag) in 1881 and passed the Health Insurance for

* H. Peters, *Die Geschichte der sozialen Versicherung*, 2 edit., Bonn-Bad Godesberg 1973; M. Stolleis, *Quellen zur Geschichte des Sozialrechts*, Göttingen 1976; D. Zöllner, in: P. Köhler und H. F. Zacher (Herausgeber), *Ein Jahrhundert Sozialversicherung in Deutschland, Frankreich, Grossbritannien, Österreich und der Schweiz*, Schriftenreihe für Internationales und Vergleichendes Sozialrecht, volume 6, p. 45 et seq., Berlin 1980, English version: D. Zöllner, in: P. Köhler and H. F. Zacher (ed.), *The Evolution of Social Insurance 1881–1981*, London–New York 1982.

** For the English-speaking reader the following brief information and dates may be helpful. From 1871 to 1945 Germany was organised as a Reich: 1871–1918 Kaiser's Reich; 1918–1933 Weimar Republic; 1933–1945 Third Reich. Since 1949 West Germany has been organised as a Federal Republic (Bundesrepublik). Within this structure the governmental functions were and are shared at federal (Reich/Bund) and provincial (Länder) levels. Only the National Socialist regime concentrated all powers at Reich level.

Workers Act (Gesetz über die Krankenversicherung der Arbeiter, 1883), the Accident Insurance Act (Unfallversicherungsgesetz, 1884) and the Invalid and Old Age Insurance Act (Gesetz betreffend die Invaliditäts- und Altersversicherung, 1887). In 1911 this legislation was consolidated into the Reich Insurance Code (Reichsversicherungsordnung). In the same year they were augmented by the Invalid and Old Age Insurance for Salaried Employees Act (Angestelltenversicherungsgesetz). In 1923 uniform social insurance regulations for the whole Reich were established for miners (Reichsknappschaftsgesetz). Unemployment insurance was introduced for the first time in 1927 (Gesetz über Arbeitsvermittlung und Arbeitslosenversicherung). A special old age insurance scheme for farmers was set up in 1957 (Gesetz über eine Altershilfe für Landwirte – Farmers Old Age Benefits Act). The coverage of insured persons was continually expanded (e.g. to cover craftsmen and other self-employed persons, students, etc.).

2.3 Non-Contributory System (*Versorgung*)

The third historical root of the present-day social benefits system is the *non-contributory system* (*Versorgung*). ‘*Versorgung*’ aims to provide benefits of higher standards than for welfare assistance but is not, however, financed by contributions. Provision for public servants of the state was created within this framework, and is different in its historical development up to the present day for the *public civil service* (*Beamte*) and the *armed services*. Both branches of provision for state servants were first set up in the nineteenth century. A third development concerned war victims (persons liable to national service and other non-regular soldiers and injured civilians). From its modest origins in the nineteenth century, it did not really come into its own on a broad scale until after the First World War in the form of the Reich War Victims’ Compensation Act (Reichsversorgungsgesetz) of 1920. Today, social security for civil servants and judges is laid down in the special Civil Servants’ Non-Contributory Schemes Act (Beamtenversorgungsgesetz, 1976) as well as in other legislation relating to the position and emoluments of the Federal and Land civil servants and judges. Social Security for soldiers serving in the Federal armed forces is covered mainly in the Soldiers’ Non-Contributory Schemes Act (Soldatenversorgungsgesetz, 1957) and compensation for war victims’ injuries, the death of heads of families, etc., is laid down in the Federal War Victims’ Compensation Act (Bundesversorgungsgesetz, 1950).

2.4 Other Developments

However, it would not be possible to include all the *other developments* in this threefold scheme (i.e. poor relief, social insurance and non-contributory schemes). For example, the Youth Welfare Act (*Jugendwohlfahrtsgesetz*) of 1922 could not be included in this scheme. It complemented legislation relating to the family and educational system in addition to the social benefits and social services. Later on after the Second World War it was necessary to deal with the consequences of the National Socialist regime and the war itself on a scale that had not been experienced hitherto. This led to special legislation to provide compensation for injustice suffered under the National Socialist regime (*Bundesentschädigungsgesetz* – Act relating to compensation for victims of National Socialist persecution, 1953), for material damage as a result of the war and of the expulsion of German people from Eastern Europe, etc. (*Lastenausgleichsgesetz* – Act relating to equalisation of burdens, 1952) and other measures designed to benefit refugees (*Bundesvertriebenengesetz* – Act concerning displaced persons and refugees, 1953) and those imprisoned under Communist regimes (*Häftlingshilfegesetz* – Act to provide assistance for people detained for political reasons outside the Federal Republic of Germany, 1955). A new trend manifested itself later in legislation whereby – especially in times of peace and political stability – society declared itself willing to compensate for damage caused by social or political circumstances, as well as for victims of damage as a result of officially ordered mass immunisation (*Bundessteuergesetz* – Federal Epidemics Act, 1961) or for victims of violence (*Gesetz über die Entschädigung für Opfer von Gewalttaten* – Act to compensate victims of a violence, 1976). Furthermore, an increasing number of services were offered without the characteristic limitations of poor relief, the typical preconditions of non-contributory provision of those of social insurance: such as general children's allowances from 1964 and housing allowances from 1960 onwards, etc.

Finally another development has to be mentioned. Social policy has largely concentrated not only on the provision of relief (to guarantee a minimum) and a guarantee against a major reduction in an individual's standard of living, but also on giving equal chances and providing the opportunity for the individual to develop his full potential ('*Entfaltungshilfen*' – 'personal development aid'). The most important examples of this are educational maintenance grants (which gradually developed until they assumed their present legal form in 1971) (*Bundesausbil-*

dungsförderungsgesetz – Federal Educational Promotion Grants Act) and vocational promotion (Berufsförderung), comprehensively covered by the Employment Promotion Act (Arbeitsförderungsgesetz, 1969).

3 Structure of Social Legislation

3.1

The three strands of German social legislation which survived for many years – insurance, non-contributory schemes and relief – evolved from the three historical roots of social insurance. The characteristics are:

Social Insurance

Provision against certain social risks (e.g. illness, invalidity); collective provision to protect the insured person by means of contributions; compensatory payments for lost income to maintain an individual's existing standard of living, granted without testing need; legal rights to benefits; administration by special bodies responsible for social insurance.

Non-Contributory Schemes

(a) Provision by the state, the local authorities and other public institutions against social risks which threaten its servants, judges or soldiers (Beamtenversorgung) or (b) compensation for damage for which the public as a whole is largely responsible (war victims' pensions, etc.); financed from general taxation; (a) benefits to maintain standards of living (Beamtenversorgung) or (b) restricted compensation for damage suffered (war victims' pensions, etc.); legal rights to benefits; administration by governmental bodies.

Poor Relief

Fulfilling basic requirements, which are catered for in no other way (principle of 'Subsidiarität'), financed from general taxation; services generally at a minimum level of existence; means tests; formerly no legal rights in law, but today generally a right based on legal grounds to the benefit or service in question, without, however, a right to a specific amount; administration by local authorities.

3.2

However, this classical division corresponds less and less to the actual development of the social benefits system (see section 2.4 above). It could no longer be ignored that the social insurance and civil servants' non-contributory schemes have provision against certain social risks (illness, invalidity etc.) in common.

A new tripartite arrangement corresponds to this:

*Provident Provision**

Social security against certain social risks (illness, maternity, invalidity, old age, death, unemployment):

- in *social insurance* by means of collective contributions by the person to be protected (the insured) or those who are responsible for his income (employer) or his maintenance (head of family, etc.)
- in *civil servants' non-contributory schemes* by similar benefits

* The German word *Vorsorge* is difficult to translate. It consists of two elements: *Vor* (pre) and *Sorge* (care). However, this does not mean that the combination of these two elements is the equivalent of 'pre-care' in English (German *Vorbeugung*, prevention, etc.). The essential difference in meaning is to be found in the use of the element *Vor* (pre). In pre-care or prevention this element means that some benefit is provided before an even worse situation sets in (in the case of the German *Vorbeugung*/prevention: so that this situation does not occur at all, if possible). In *Vorsorge*, however, *Vor* (pre) means that even before a social risk occurs, provisions are made on how social security can be ensured if such a risk occurs. Thus, the *Vor* in *Vorsorge* means that provisions are made in advance for any possible risk so that the benefits required in case of such a risk can be provided upon its occurrence. Benefits are provided after the risk occurs. The *Vorsorge* system sees the danger of social risks and thus establishes the legal and financial framework in order to ensure the provision of benefits when necessary. The French word *prévoyance* corresponds to the German word *Vorsorge*. In English two words – providence and provision – come close to it. Therefore the authors have translated *Vorsorge* into 'provident provision' in order to put across the German idea.

The difficulties of translation in this instance are considerable since the German words *Vorsorge* and *Versorgung* are very similar.

Versorgung for somebody means that steps are taken to ensure the provision of those things that are necessary for income maintenance so that the person concerned does not have to do so himself. The word can include the provision made by a man for his wife, e.g. after his death, assuming he has property to leave to her. In the history of social policy, however, the word *Versorgung* goes further and covers the notion that it

guaranteed by the authorities responsible for the employment of civil servants, judges and soldiers.

Social Compensation

Compensation for damage for which the public is responsible (the consequences of war, political persecution, injury caused through national or military service, injury from officially ordered mass immunisation, injury caused by crimes of violence, etc.).**

Assistance and Promotion Schemes

Social assistance where need arises or social promotion in order to guarantee equal opportunities for individual development.

- Special assistance and promotion systems grant personal development aid (training promotion) or are intended both to combat need and assist in social promotion (children's allowance, housing allowance, youth services).

was the duty in earlier days of the princes, later of the republican governments – in other words, of the state – to provide for the maintenance of those for whom they were responsible. The most important groups were the public servants and members of the armed services. 'Non-contributory schemes' for their social assurance provision were thus described as *Versorgung*. There is an even more general tendency to regard social benefits which are not based on contributions as not being social insurance benefits. Although they are not dependent on specific need they are not regarded as social assistance benefits either. In German these schemes fall under the term *Versorgung* which has a similar meaning to the English word 'demogrant'.

Thus, it is clear that the German concepts of *Vorsorge* and *Versorgung* overlap. Non-contributory schemes for public servants are, for example, as much non-contributory provision as provident provision. The government is responsible for their social security. Therefore, it provides for the public servants and does so with provident provision, e.g. by providing in the case of sickness, maternity, invalidity and old age. Social insurance has only the characteristics of *Vorsorge*; the insured are not provided for by anyone else, but provide for themselves with their own contributions. Compensation for war victims, however, is *Versorgung* because it is not possible to provide for a true provident provision for the consequences of war.

** In the Social Code mention is made of social compensation only in connection with physical injury (injuries, damage to health, death), as covered e.g. by the Federal War Victims' Compensation Act but not of material damage and damage to assets (as, for example, covered by the Act relating to equalisation of burdens), see section 2.4. Therefore, in the literature the reader may find the same difference.

- The general assistance and promotion scheme is social assistance. As a fundamental system it guarantees a minimum existence for everyone for whom no provident provision has been made or where circumstances do not justify social compensation. In addition, it ensures similar assistance in special cases of need (e.g. illness, maternity) and (similar to the special assistance and promotion systems) it grants assistance towards integration (e.g. integration assistance for the disabled) and for personal development (e.g. to enable someone to become economically independent).

4 Legal and Financial Framework

4.1 Administrative and Financial Structures

Every system of social security is regarded generally as part of public administration and financed from public expenditure. (However, this may not hold good for complementary systems such as occupational provision for old age or for the activities of welfare organisations.) The different systems of social security are related to different types of administrative and financial structures.

Public administration in the Federal Republic of Germany is organised partly on a territorial and partly on a functional basis. Territorially, at governmental level are the Federal Republic and the Länder; local authorities at the medium level are the regional districts and rural and urban district councils; local authorities at the lowest level are the municipalities and rural communities (together called the communes). Hamburg, Bremen and Berlin possess all the powers of the Länder and of the local authorities. Functionally public administration is organised according to a concept of specific legal entities: corporate bodies (Körperschaften), institutions (Anstalten), or property-holding bodies (foundations – Stiftungen). The territorial organisations are financed from a variety of public revenue sources, of which the most important are taxes. The functional organisations – the corporate bodies, for example – are financed by members' contributions, and the institutions by government grants, or by contributions from those who obtain the services of the institutions. For the foundations, there is no specific means of supplementing the original funds. Foundations play only a minor role in the administration of social legislation, the other types of administration and financing can be found more frequently in the administration of social services.

- *Social insurance* is organised through corporate bodies and institutions and financed principally by contributions.

- *Non-contributory schemes for public officials* are administered by the employers of the officials, judges or military personnel. There is no specific form of organisation and the schemes are financed from the general revenue of the employers.
- *Social compensation* is the responsibility of the government; administered by the Länder, part of it is financed by the Federal Republic and part of it by the Länder.
- *Special assistance and promotion systems* are administered by many authorities, the Länder, the communes or special bodies (e.g. the Federal Institute of Labour). The expenditure of the Federal Institute of Labour is financed partly by contributions. The remaining special assistance and promotion systems are financed from general revenue.
- *The general assistance and promotion system* (social assistance) is the responsibility of the local authorities (at different levels) and is financed from the general revenues of the local authorities.

4.2 Administrative Procedural Law

Since the implementation of social security is seen as part of public administration, and since the administration is closely tied to the law, it follows that the application of the regulations by the administering authorities leads to considerable legal formality. Decision-making on rights and duties, the way benefits are granted and so on, mainly follow the administrative model, which has a long tradition: the administrative Act (*Verwaltungsakt*). The way the administrative Act is prepared, the forms it takes, its proclamation, its validity and so on, are all regulated by statute. However, questions relating to the *de facto* execution (the activities of doctors, nursing, and caring personnel and so on) are much less closely regulated by law.

4.3 Legal Protection via the Judiciary

Legal protection is divided initially into two legal jurisdictions: social legal jurisdiction and administrative legal jurisdiction. The *social courts* (three levels: social courts – Sozialgerichte; Land social courts – Landessozialgerichte; Federal social court – Bundessozialgericht) are, in particular, responsible for disputes over social insurance, employment promotion, social compensation and children's allowances. The *administrative courts* (comprised of three levels: administrative courts – Verwaltungsgerichte; administrative high courts – Oberverwaltungsgerichte/Verwaltungsgerichtshöfe; Federal

administrative court – Bundesverwaltungsgericht) are responsible for disputes concerning provident provision for civil servants, postwar damage compensation, educational promotion, housing allowances and social assistance. Where disputes in the field of compensation for victims of National Socialist persecution or in the field of youth services are concerned, ordinary courts (civil courts: local courts – Amtsgerichte; regional courts – Landgerichte; higher regional courts – Oberlandesgerichte; Federal court – Bundesgerichtshof), can also be involved. When a claimant is of the opinion that the action of the administration or the decision of the court contravenes the Basic Law (see section 4.4) he can, when he has exhausted all other remedies, appeal to the Federal Constitutional Court.

Legal advice and representation of claimants before the courts is given less emphasis than the protection afforded by the courts. There is only an obligation to employ a lawyer before the highest courts (the Federal social court, the Federal administrative court and so on). Generally a claimant can represent himself. He can also obtain assistance from associations (trade unions, associations of disabled people and so on) in order to make his claim. Furthermore, the judges have a legal duty to assist him by appropriate procedural means. More recently, assistance can be given to enable a person after a means test to obtain the advice of a lawyer before a hearing in court. However, it must be pointed out that the position both in law and in reality differs considerably from one field of law to another.

4.4 Social Policy, Law and the Constitution

Social policy, law and the constitution are closely interconnected in the Federal Republic of Germany. For several reasons legislation is the most important instrument to set out any social programme with binding force. There is firstly the democratic aspect. Laws are passed in Parliament and so the will of the majority is expressed. There is also a Federal aspect. Since the Bundesrat, the second chamber, has a strong influence on the legislative process, so have the Land governments who are represented in it. Thirdly, above all, there is another aspect based on the great importance given to the law as the means of political decision-making and development (Rule of Law – Rechtsstaat). What is promised to a citizen by law are his personal rights. He can, with the help of the courts, put them into effect. Obviously, it is also the duty of the government and the administration to safeguard the law and to translate it into reality. This is also very important for a high level of conformity to

the law on the part of citizens and society generally. Social policy is conceived within the philosophical framework of legislation, whereby statutes are the most powerful way to express political will. The citizen has a great deal of confidence in legislation being implemented but would be worried if his claims were not based on written legislation. Thus it would appear that social law and social policy are two sides of the same coin.

The system of law is marked by the characteristics of a hierarchical system of rules. The constitution (in the Federal Republic: the Grundgesetz – the Basic Law) is above all law, particularly law which is passed by Parliament. All courts can refuse to apply Acts and Regulations which are in conflict with the Basic Law. The final decision as to whether an Act is in conflict or not lies with the Federal Constitutional Court. Here the two tendencies meet: namely, that politics and policy are brought to bear via legislation, and that the constitution stands above both politics and policy. The Basic Law is of great significance for social policy, since social policy is put into effect by legislation, and since all legislation must be tested against the rules laid down by the Basic Law so that there is no conflict with the Constitution. In practice, therefore, the Federal Constitutional Court pronounces upon the impact of the Basic Law on social policy. Thus, over the years the Federal Constitutional Court has played an increasing role in the social field.

5 Social Legislation and Social Work*

Social legislation and the legal framework can be seen at their strongest in the allocation of economic goods (in particular, cash benefits). Social legislation is at its weakest in the field of the personal social services (care, bringing up the young, medical treatment and nursing). Where personal services are concerned, the first essential is to find people and form organisations capable of rendering these services. In the case of certain special professions (e.g. doctors), the law can become involved and give these services a certain legal status. However, there remains an area of welfare which tends to be resistant to legal regulation. This is the area of social work which the law can only guarantee and guide to a limited extent. The difficulty lies not only in the variety, openness and indefinite nature of what social work has to do. Social work also occupies a middle area between the state and the private sphere.

* F. Flamm, *Social Welfare Services and Social Work in the Federal Republic of Germany*, Frankfurt 1974.

Legislation and literature dealing with German social policy still barely reflect these problems. Only social assistance and youth service legislation prescribe social work in many instances. But the cash benefits and medical services within the social insurance system are increasingly being augmented by social work. It is at last becoming increasingly clear that complicated social legislation itself requires mediation by the social worker who can help the client both in overcoming the technical difficulties involved in applying complicated law that is difficult to understand, and with the authorities which have to carry it out. However, neither statutory regulations covering these problems nor adequate guidance via judicial decisions or legal writings are available.

This does not only apply to the role of the individual social worker. On the contrary, the same is true of those responsible for social services which exist between the state (the Federal and Länder governments, the local authorities and the social insurance organisations) and the individual, his family and his groups: the voluntary welfare organisations (the Protestant Relief Organisation, the Catholic Caritas, the Red Cross, the Workers' Welfare Organisation, etc.). They not only carry out the services set up by social legislation, but also augment the services programmes contained in such social legislation. Their relationships and functions are also largely unregulated and it would appear that this is to remain so to a certain extent. Furthermore, legislation guarantees them independent status, notwithstanding their functions, but also guarantees their continuing involvement in the provision of services.

II Individual Areas of Social Legislation*

6 Delimitations

It is not possible to deal with all areas of social legislation in detail. On the contrary, it is necessary to restrict ourselves here to those areas which are to be included in the *Social Code* (Sozialgesetzbuch). The limitations which the legislator has imposed have widely differing reasons. For example, the following were *excluded* from the Social Code:

- non-contributory schemes for civil servants, judges and regular soldiers, in order to keep together all regulations concerning civil servants, judges and soldiers;
- the Act concerning restitution for injustice under National Socialism (Federal Compensation Act) was excluded in order to ensure that its characteristics of providing compensation for damage for genuine injustice were not overshadowed by those of social assistance;
- postwar damage compensation (Act relating to equalisation of burdens) as well as special legislation benefiting refugees, former prisoners of war, former political detainees, etc., on account of their unique historic character;
- certain systems covering social legislation for self-employed occupations, etc., because these are regulated by the Länder.

7 Provident Provision: Social Insurance

7.1 General

Social insurance comprises health insurance (insurance against the risk of illness and pregnancy), pension insurance (insurance against the risk of invalidity, old age and death with surviving dependants) and accident insurance (insurance against the risk of illness, invalidity and death with surviving dependants, when

* For a survey see also A. André & K. Burchardt, *Employment and Social Security in the Federal Republic of Germany*, 3rd edit., Sankt Augustin 1980.

damage is caused by an occupational disease or by an accident at work or an event considered in law to be similar). Even social provision against unemployment partly takes the form of social insurance (so-called unemployment benefit). However, this branch of social insurance differs considerably from health, pension and accident insurance* as it is a component of employment promotion.

In principle, for the purpose of social insurance, *insured persons* are employees,** persons who are employed for occupational training purposes, the handicapped who are employed in protected workshops, farmers, home workers and a number of *self-employed* persons (midwives, actors, and others, in so far as these persons do not employ salaried workers). Nevertheless, the *coverage of insured persons* in the individual branches of social insurance differs widely.

Administratively, social insurance is based on the principle of self-government. Those responsible for *social insurance* are corporate institutions under public law. The main bodies (representatives, assemblies and boards) are generally elected on a parity basis by those insured (employees and other insured persons) and employers. The *state* (at Federal level: the Federal Minister of Labour and Social Affairs and the Federal Insurance Office; at Land level: usually the responsible Minister of Labour and Social Affairs), *supervises* those responsible for insurance. His powers are, however, generally restricted to ensuring that the law is observed. Where insurance bodies have discretionary powers, he can only intervene in exceptional cases. Discretionary powers given to autonomous bodies by the law, however, differ widely (the most extensive being in accident insurance and the least extensive in pension insurance).

7.2 Health Insurance

7.2.1 Insured groups of people. Over and above the general coverage of insured persons (see section 7.1 above), those eligible for insurance are unemployed benefit recipients, persons receiving pensions from pension insurance schemes and students. In the case of salaried employees, the obligation to be insured depends on an upper income limit. Voluntary insurance is possible in a large number of cases.

* See Chapter 10.

** A difference is always made between wage earners and salaried employees.

7.2.2 Benefits. Health insurance guarantees payments for treatment and nursing, as well as income maintenance payments (sickness benefits). Payments for treatment and nursing meet the cost of treatment and nursing for both those insured and their dependants ('family benefits').

Preventive health measures (laid down in Acts or legal regulations in the case of special groups of persons and special diseases), are given greater priority than treatment. In the *case of illness* provision is made within the framework of treatment and nursing measures for medical and dental treatment, the supply of drugs and medicines, spectacles, artificial limbs, orthopaedic and other aids, the cost of dentures, medical tests and occupational therapy. In individual cases of hospital care, home nursing (nursing in the home of the patient) or home help (help with running a household) may be provided. All these services are provided for an unlimited period. Payment is made according to the so-called *Sachleistungsprinzip* (provision of services in kind): the health insurance scheme pays whoever has rendered the service, e.g. the hospital; the insured person pays nothing – thus, he has no claim against the insurance scheme for reimbursement. This system is particularly complicated where doctors are concerned. Most self-employed doctors and hospital consultants are registered as insurance scheme doctors. They form insurance funds doctors' associations which fix payments for medical services in collective agreements with associations of insurance funds.

Income maintenance payment (sickness benefit) is received only by an employed person who is incapable of working due to illness and whose income is thus reduced. The sickness benefit totals 80 per cent of income lost due to incapacity for work (restricted to the upper contribution income limit). However, sick employees who are incapable of working can claim from their employers the continued payment of wages for a period of six weeks, after which time sickness benefit payments start to be paid. The sickness benefit is paid for a limited period (seventy-eight weeks in three years in respect of the same illness).

Maternity Benefit covers the necessary care and nursing by doctors, midwives, etc., during pregnancy, at birth and following confinement. In place of sickness, the mother receives a maternity benefit. Legal termination of pregnancy usually corresponds in law to maternity. Health insurance also provides medical advice on family planning.

Child Sickness Benefit is a special family allowance. If an insured person has no choice but to stay at home in order to care for a sick child, he may claim unpaid leave from his employer and then

claim the sickness benefit from the health insurance scheme. Both claims can be made up to a maximum of five working days per calendar year for each child.

7.2.3 Financing. Health insurance is financed by contributions, half of which are paid by the employer and half by the employee. The amount of these contributions is fixed by the health insurance bodies within statutory limits.

7.2.4 Organisation. Generally, the local health insurance fund is the body responsible for health insurance. In some circumstances, its work is done by firms and guild health insurance schemes. Special health insurance schemes exist for sailors and miners. Insured persons can also choose an alternative insurance scheme (Ersatzkasse) which allows a certain degree of freedom as far as contributions and services are concerned, whilst providing the statutory minimum of services.

7.3 Pension Insurance

7.3.1 Multiplicity of systems. Insurance for old age, invalidity and death differs widely. The basic type is pension insurance for wage earners and salaried employees. Variations on this theme are pension insurance schemes for miners and craftsmen. In contrast, farmers' old age insurance is a very different independent branch. Provincial (i.e. Land) legislation provides for special arrangements for old age for specific liberal professions (as, for example, doctors).

Apart from possible individual additional provision via private insurance schemes, all these systems can be supplemented by occupational and professional *additional systems*. The most common is supplementation by means of occupational old age pensions.* This area of social security should be regarded as part of labour law.** The additional systems have, however, special legal, statutory or industrial agreement regulations for individual groups.

The main additional system is for wage-earners and salaried employees in *public service*. In principle, every employee in public service who is engaged under a private law contract enjoys this additional provision alongside general social insurance. Social security for servants of the state, local authorities and other public

* See Gesetz zur Verbesserung der betrieblichen Altersversorgung – Act for improvement of occupational old age pensions – vom 19.12.1974, BGBl. I, S. 3610.

** Disputes are dealt with by the labour courts.

employers covers old age, invalidity and death in the following cases:

- civil servants, judges and soldiers: in public non-contributory schemes for civil servants, judges and soldiers (see Chapters 2 and 3);
- salaried employees and wage earners engaged under a private law contract: in pension insurance for salaried employees and pension insurance for wage earners and in an additional scheme for public service.

On account of this multiplicity, only the main types of *pension insurance for salaried employees and wage earners* can be dealt with here.

7.3.2 Coverage of insured persons. Over and above the normal groups of insured persons, pension insurance (see section 7.1 above) is open to persons such as the self-employed who, on application, can be placed on a similar footing to employees who are compulsorily insured. There is also the possibility of voluntary insurance. However, the voluntarily insured do not have equal rights in all respects to the compulsorily insured.

7.3.3 Benefits. Apart from actual pension payments to the insured persons, pension insurance provides pension payments for dependants and contributions to health insurance funds as an addition to the pension payments, rehabilitation (medical treatment and vocational promotion) as well as additional services (e.g. measures designed to maintain or prolong working life, to improve health conditions, etc.), and finally reimbursement of contributions where pension insurance cannot be continued.

Income maintenance includes, on the one hand, pensions for insured persons (in the case of incapacity to perform a particular job, incapacity for work generally and old age), on the other hand, pensions for dependants (widows, widowers, former husbands, former wives and orphans). Widows' (widowers') pensions for rearing dependants combine elements of the insured person's pension and that of the pension for dependants.

Income maintenance for insured persons. An *insured person* is considered *incapable of performing a particular job* when his working ability is reduced by illness to half of that of a physically and mentally healthy insured person with similar training, knowledge and abilities. The term 'incapacity to perform a particular job' therefore depends on whether and to what extent someone can still make use of special individual vocational abilities. In contrast, someone who is incapable of working is an insured person who, for an unforeseeable period, is no longer able to follow any form of

employment on a reasonably regular basis or can only earn a small income. The definition of *old age* for insurance purposes has numerous graduations. Since the introduction of the flexible retirement age (1972), it has been fixed between the ages of 60 and 65.

The level of pension is composed of the following elements: (1) the income (which has to be determined for every year) during the period of insurance (which formed the basis for the contributions); (2) the average income (which is to be determined for every year) of all insured persons; (3) the average income of all insured persons at the time the insurance in question matures; (4) the duration of the period of insurance and (5) the coefficients for the years (explained below). The combined function of elements 1, 2 and 3, is to provide a 'personal assessment basis' for every pensioner. This places him, when he is a pensioner, in a position relative to the average income of insured persons that is comparable to his relative position during working life. The pension will result from the multiplication of the personal assessment basis (1, 2 and 3 above) with the number of years (4), and the coefficient for the years (5). The coefficient for the years differs in cases of incapacity to perform a particular job, on the one hand, and of incapacity to work and of old age, on the other hand. The formula used for personal assessment is, therefore, as follows:

Insured Income	=	Personal assessment basis
Average income of the insured person during the period of insurance		Average income of the insured person when pensioned

Therefore someone, for example, who has always earned an average salary, has a personal assessment basis which corresponds to the average income of the insured person when pensioned. In 1982 the general assessment basis amounted to DM24.099 per annum. An insured person who has always earned an average salary therefore receives this sum as his personal pension assessment basis. Further assessment now takes place by means of elements (4) 'accountable insurance years'* and (5) 'coefficient

* Periods of insurance are not only periods of contribution but also supplementary periods (e.g. war service, time spent as a prisoner of war, etc.), gaps (e.g. sickness, unemployment, etc.) and 'reckonable' periods (whereby the insured person who becomes incapable of performing a particular job or becomes incapable of working before the age of 55, is regarded as though he had reached this age at the time the insurance matures).

for the years' and the following formula:

$$\frac{\text{personal assessment basis} \times \text{insurance years} \times \text{coefficient for the years}}{100}$$

In the case of a pension for a person unable to perform a particular job, the 'coefficient for the years' is 1 per cent, for those unfit to work and for the old age pension it is 1.5 per cent. Thus, in the case of a pension for incapacity to carry out a particular job, the pension consists of 1 per cent for each accountable insurance year of the personal assessment basis, in the case of incapacity for work pension and old age pension 1.5 per cent of the personal assessment basis for each year of insurance. If it is assumed that someone starts work at the age of 16 and at 55 is incapable of performing a particular job, he is paid a suitable pension amounting to 39 per cent of his personal assessment basis. In the case of the average wage earner, in 1982 this amounted to a sum of $\text{DM}240.99 \times 39 = \text{DM}9.398.61$ annual pension. Should the same employee become incapable of working at 56, he has therefore accrued forty accountable insurance years and an increased rate of 1.5 per cent, and receives a pension of 60 per cent of his personal assessment basis, i.e. $\text{DM}240.99 \times 60 = 14.459.40$ annually. As a normal old age pensioner (65), he has accrued forty-nine accountable insurance years and an increased rate of 1.5 per cent. He thus receives a pension of 73.5 per cent of his assessment basis, i.e. $\text{DM}240.99 \times 73.5 = \text{DM}17.712.76$ annually. Pensions already being paid are adapted every year in accordance with income developments. Additional payments are made for dependent children, but not for a spouse.

Income maintenance for widows, widowers and orphans. *Widows' and Widowers' pensions* generally amount to 60 per cent of the pension received by the insured person or which would have been received. In principle, the pension paid is basically what is paid in the case of incapacity to perform a particular job. However, if a widow or widower is over 45 years of age or has children to bring up, the higher incapacity for work pension is used as a basis. A widower only receives a pension if his wife was mainly responsible for supporting him. *Orphans' pensions* are calculated in a more complicated way than widows' pensions: part is calculated from the insured person's own pension, part from the general assessment basis.

A pension claim is particularly difficult to assess if a *marriage* has been *terminated* by divorce. Until 1977 a former wife or husband

was to a great extent placed on the same footing as a widow or widower. Several wives or husbands had to share a pension. But in 1977 the equal division of benefit expectations (Versorgungsausgleich) was introduced. In the event of divorce, pension rights accrued by the marriage partners during the period of marriage are divided equally between them. The special *benefit paid to widows rearing children* (Erziehungswitwengeld) was introduced at the same time. If a divorced husband or wife dies, a former marriage partner who has children to bring up can claim a pension in their *own right* (assuming that there is a benefit expectation in their own right).

7.3.4 Financing. Pension insurance is mainly financed by contributions (at present 18 per cent of the net income up to a certain contribution assessment limit), half of which is generally paid by the employee and half by the employer. Additional supplements are paid by the Federal Government.

7.3.5 Organisation. Pension insurance for salaried employees is administered by the Federal Institute for Salaried Employees' Insurance (Bundesanstalt für Angestelltenversicherung) and for wage-earners by Land insurance institutions. In addition there are special insurance institutes for seamen and for railway employees.

7.4 Accident Insurance

7.4.1 Structure of accident insurance. Accident insurance covers the risk of injury, sickness, reduced income or the loss thereof and death with surviving dependants, where these social risks are caused by an occupational disease, an accident at work or another accident legally regarded as similar.

The origins of accident insurance lie in labour law and civil liability. The objective was to provide the employee with reliable protection against the consequences of accidents at work. To this end, employers were organised in an accident insurance system which, in the main frees them from employers' liability for accidents at work. Later, accident insurance was extended to include cases outside the sphere of work (recently, for example, it has been extended to cover children in kindergartens, pupils and students). Today, many of these cases would fall under the heading of social compensation legislation (e.g. lifesavers, voluntary helpers in charity organisations, blood and organ donors, etc.). It was inevitable that this expansion would affect the financing and the organisations. For this reason, reference is made to *genuine accident insurance*, which is restricted to working life and is financed by

enterprises organised in so-called accident insurance funds (Berufsgenossenschaften) with specific responsibility for reducing accident and sickness hazards in working life (by means of preventive measures, works' medical services, etc.). By contrast, 'false' accident insurance, which applies particularly in areas of public interest (e.g. lifesavers, blood donors, schoolchildren and students), is financed from general tax revenue monies and is the responsibility of the Federal Government, the Länder, local authorities and other public bodies. It is in fact mainly a part of social compensation (see Chapters 2 and 3). Common to both 'genuine' and 'false' accident insurance is the provision of benefits and the legal framework.

7.4.2 Coverage of insured persons. The range of insured persons is classified less according to group than to activity, depending on the accident risk of this activity (industrial work, attendance at kindergartens, schools and further education establishments, co-operation in welfare activities of benefit to the community, disaster relief, lifesaving, etc.). In effect, the range of insured persons goes far beyond the normal group (see section 7.1 above).

7.4.3 Benefits. *Prevention* (accident prevention, works' medical services)* and first aid are developed to a great extent. Those responsible for accident insurance also have the right to make regulations and to order and implement individual measures.

Compensatory benefits and services are linked either to *accidents* or to *occupational diseases*. The most common occupational diseases are defined by legal regulations. Over the years, an accident has come to be seen in a wider context than the narrower definition of an insured activity. The most important example is the accident on the way to work: the insured person is covered by accident insurance from his home to the insured activity and back.

Accidents and occupational diseases give a right to *comprehensive medical care* (including the provision of artificial limbs and similar aids) as well as retraining and other measures for *reintegration into*

* Here those responsible for accident insurance compete with government bodies (so-called Factory Inspectorates – Gewerbeaufsichtsämter) which generally have the task of controlling safety at work and similar matters. Further, the commitments of those responsible for accident insurance also conflict with the responsibilities of employers who, for example, are responsible for works' medical services and the provision of safety engineers in firms (see Gesetz über Betriebsärzte, Sicherheitsingenieure und Fachkräfte für Arbeitssicherheit – Act relating to medical services, safety engineers and other specialists for health and safety in employment).

working life. Temporary loss of income is compensated by so-called *temporary payments*, and permanent reduction in income, by a *pension*. This pension for the disabled is generally based on the last salary or wage, unlike pension insurance where the pension is oriented to the average income during working life.

Should the disabled person be totally incapable of work, the pension amounts to two-thirds of the last income. If the capacity of the injured person to work is merely reduced, the pension is correspondingly smaller. Should the insured person *die* as a result of the accident or the occupational disease, the *bereaved* (widow, widower, former marriage partner, orphan) receive a pension similar to that paid under pension insurance arrangements. One unusual feature is that pensions are also paid to an injured person's parents if they had been supported by the injured person.

7.4.4 Financing. Funds for 'genuine' accident insurance are raised from contributions made by employers, those for 'false' accident insurance come from tax revenue. Contributions by enterprises are graduated according to the risk of accident.

7.4.5 Organisation. 'Genuine' accident insurance is implemented by so-called accident insurance funds (*Berufsgenossenschaften*) which exist for certain branches of industry (e.g. farming, the building trade). Some are organised regionally, and others cover the whole of the Federal Republic. The Federal Government, the *Länder*, local authorities, as well as the Federal Labour Institute and the accident insurance funds also look after the accident insurance of their own employees. The Federal Government, *Länder* and local authorities are also responsible for 'false' accident insurance.

Another special feature is the *procedure* under which accident insurance operates. Whereas generally an individual has to apply for social insurance benefits and services, under accident insurance the administration is itself obliged to seek out potential recipients. Those responsible for accident insurance also have to establish the cause of an accident.

8 Social Compensation Legislation

8.1 Coverage

As far as it is to be included in the Social Code, social compensation legislation originated as provision for war victims. However, the pattern created for war victims' provision has increasingly been adopted for present-day problems, such as provision for those

liable to military service in the Federal armed forces and those conscientious objectors performing alternative civilian tasks, for injury in the event of officially ordered mass immunisation and for the victims of crimes of violence (see Chapters 2 and 3).

8.2 Benefits

The following are guaranteed for the purposes of social compensation: medical treatment (including the supply of artificial limbs and similar aids), services for the maintenance, improvement and restoration of working capacity as well as for *reintegration into working life* and promotion, together with *cash payments*. The following cash benefits can be granted: pensions to injured persons as a result of diminished working capacity, pensions to the bereaved, funeral grants and death benefits. In certain cases laid down in law, a lump-sum settlement can be made instead of continuous pension payments if the injured person applies for this.

The *pension payment system* is very complicated. The *injured person* personally receives a certain basic pension calculated according to the degree of his injury without, however, taking account of the reduction in his income. Certain additional payments exist for this purpose for persons who are severely handicapped and for the extremely severely handicapped. In addition, severely handicapped persons may receive an equalisation pension and an occupational injury equalisation payment, both of which are designed to compensate for the loss of income suffered by the injured person. There is, however, always an upper limit for this equalisation payment. Above average loss of income (e.g. in the case of an injured doctor) is not fully compensated. Injured persons in need of attendance receive an attendance allowance. Payments to *bereaved persons* are sometimes lump-sums (funeral grants and death benefits) and sometimes continuous payments (widows' pension, orphans' pension, parents' pension). Continuous payments to bereaved persons are as complicated in structure as those made to injured persons themselves.

8.3 Financing

Funds are generally made available by the Federal Government. The Länder are responsible for the cost of compensation for victims of crimes of violence.

8.4 Organisation

The social compensation legislation is administered by the Länder

authorities (offices to run war victims schemes at regional and Land levels). The Federal Government may lay down administrative guidelines centrally.

9 Special Assistance and Promotion Systems: Aid and Promotion for Families, Children and Young People, Education and Housing Allowances Schemes

9.1 Youth Services

9.1.1 Services and benefits. Para 8 of the Federal Section of the Social Code defines the purpose of aid to the young as follows:

Every young person has the right to education to enable him to develop his personality. This right is realised by means of aid to the young via general promotion measures available to young people and families and so far as this is not done by parents, ensured by means of educational aid.

Therefore youth services have to go beyond the normally accepted boundaries of social services provision. Youth services are not dominated by economic considerations as are other social benefits, and usually unlike most other social services do not require evidence of financial need. Youth services do not only consist primarily of economic benefits but also of educational ones. Since the education of children is mainly the responsibility of parents, youth services are on the borderline between family law and social legislation. Since schools are the usual public establishment for educating the young, there is also a link with legislation relating to education. Youth services also include services rendered by the state to benefit children and young people who, without this assistance would be underprivileged in society. In this respect youth services are part of social legislation.

The present youth services legislation dates back to the Youth Welfare Act (*Jugendwohlfahrtsgesetz*) of 1924, which was fundamentally revised in 1961. However, it is generally thought that the latest developments in society – particularly within the family and the place occupied by children in society – demand a further thorough reform of the Youth Services Act. A number of Bills have been put before the Bundestag for the new Youth Services Act.* However, none has been passed. The current Act provides general measures for the promotion of young people (leisure-time oppor-

* Deutscher Bundestag, Drucksache, 8/2571, 8/3108 and 8/4010.

tunities, educational opportunities, subsidies for youth organisations, etc.). In addition, there is a range of measures to ensure individual education which – according to circumstances – can be applied for, either in co-operation with parents or even against their will (in this case, on the order of a court). In extreme cases, where the physical or mental health of children is in danger, they can be cared for in a home or by foster parents instead of being brought up by their own parents. Youth Services are also obliged to help young people even if they have been convicted of a crime.

9.1.2 Financing. Youth services are mainly financed by local authorities (regional districts and large independent towns). The Federal Government and the Länder also make funds available.

9.1.3 Organisation. Special youth offices and young people's welfare committees have to be set up by rural districts and independent towns to implement youth services. The majority of the members of these committees are councillors of the local authorities and some are experts. Corresponding Länder regional youth offices and regional young people's welfare committees have to be set up. Voluntary organisations, voluntary welfare associations which take care of young people as well as young people's organisations also play an important part, in addition to the official bodies responsible for aid to the young.

9.2 *Children's Allowances**

9.2.1 Coverage and benefits. People who have to bring up children receive children's allowances. At present, these amount to DM50 per month for the first child, DM100 per month for the second child, DM220 per month for the third child and DM240 per month for the fourth child and for further children. If, however, the salary earned is greater than a certain amount, children's allowances may be reduced up to DM70 per month for the second child and DM140 for the third child and for further children.

* Children's allowances have a relatively colourful history. Children's allowances were paid for the first time from 1935 to 1945. In 1954, children's allowances were reintroduced – as a branch of social insurance. In 1964 this social insurance structure was dropped. The cost of children's allowances was assumed by the Federal Government. Initially, however, the family equalisation system operated in two ways: via taxation laws and via children's allowances, and sometimes in both ways. Further reform in 1975 removed the tax allowances and largely standardised the system of children's allowances, salary supplements for children and additional payments to social benefits.

Children's allowances are generally paid until the children reach the age of 16. If they then continue vocational training, the allowances are paid until the age of 27. In the case of handicapped children, allowances are paid after the age of 27.

9.2.2 Financing. The cost of children's allowances is borne by the Federal Government.

9.2.3 Organisation. The Federal Labour Institute (see Chapter 10) is responsible for the administration of children's allowances and, in this context, bears the name of 'Children's Allowance Fund' (Kindergeldkasse).

9.3 Maintenance Advance

9.3.1 Coverage and benefits. Children up to the age of 6 who live with one parent and do not receive maintenance from the other parent have a right under the Act to a public maintenance benefit. This is a fixed amount similar to that paid according to family law to illegitimate children by the father for a maximum period of thirty-six months. The claim against the parent who is liable to pay maintenance is taken over by the Land.

9.3.2 Financing. The maintenance advance is (in so far as the expense is not recovered from those liable to pay maintenance) financed from tax monies, half from the Federal Government and half from the Land.

9.3.3 Organisation. The appropriate administrative bodies are determined by Land legislation. Normally the youth offices are responsible.

9.4 Educational Maintenance Grants

9.4.1 Coverage. Educational promotion is designed to allow everyone to enjoy suitable training according to inclination, suitability and ability, and if funds from other sources are not available to provide a living and training. Training includes senior grammar school classes (Gymnasien), technical colleges (Fachoberschulen) and other senior schools, as well as training at universities and technical universities. In special circumstances, participants in correspondence courses also receive grants. In any case, training is subsidised until a vocational qualification is attained. However, further training can still justify promotion. Those commencing training after the age of 35 do not usually receive grants.

9.4.2. Benefits. Grants are graduated according to the type of school and whether or not the person undergoing training lives with his parents. A university student who does not live with his parents currently receives DM660 per month. The applicant's ability to pay as well as that of the family (spouse and parents), is taken into account, according to certain fixed limits. Generally, payments are in the form of subsidies (i.e. they do not have to be repaid). In the case of university students part of the grant is given in the form of an interest-free loan. Repayment does not commence until three years after completion of training and then only when a certain level of income has been reached.

9.4.3 Financing. 65 per cent of the expenditure on educational promotion is borne by the Federal Government and 35 per cent by the Länder.

9.4.4 Organisation. Educational promotion is the responsibility of the Länder. They set up educational promotion offices in rural districts and independent towns as well as regional offices. There are special offices for universities.

9.5 Housing Allowances

9.5.1 Framework. State concern that suitable housing exists for everyone is expressed in a wide variety of ways, e.g. (1) in social measures within the framework of ownership and rental laws, (2) in measures relating to the accumulation of assets (tax allowances for savings with building savings banks and the building and purchase of public flats and houses), (3) in social programmes: (a) directed towards public housing schemes (subsidies to stones) and (b) housing allowances (subsidies to people). Only housing allowances come within the sphere of social legislation.

9.5.2 Benefits. Housing allowances can be made both as a contribution towards rent or as a contribution towards the cost of accommodation which is the property of the occupier. Whether a housing allowance is paid at all and the extent of such a payment depends on the size of the household and family income and on the level of the rent or payments due.

9.5.3 Financing. Half of the housing allowance is paid by the Federal Government and half by the Länder.

9.5.4 Organisation. Rural districts and independent towns are responsible for administration.

10 Employment Promotion, Unemployment Insurance and Assistance, Bankruptcy Wages Guarantee

10.1 Overall System

Measures designed for the procurement of work, making jobs available, the individual promotion of vocational qualifications and payments for compensation for loss of income in cases of reduction in hours worked, unemployment, employers' bankruptcy, are combined legally in a single system – employment promotion. The comprehensive organisation which deals with all these functions is the Federal Labour Institute. It maintains branch offices at Land level (Land Labour Offices) and at regional level (Job Centres).

10.2 Services and Benefits

The functions of 'labour administration' are as follows:

10.2.1 Careers advice and placing in work. These activities include *careers advice* (e.g. in schools) and the finding of openings for apprentices; job counselling (information about vocational openings on the labour market and individual suitability to make use of them) and *placing in work*. The Federal Labour Institute has the monopoly in the field of work placement. Other agencies can only operate with the permission of the Federal Institute. The above-mentioned services include only advice and information.

10.2.2 Individual promotion of vocational training and integration of the disabled into working life. However, in the wider field of job promotion, services and cash benefits are provided. These activities include the *individual promotion of vocational training*, further training and retraining benefits for the individual who is to be helped to attain better vocational opportunities as a result of training, further training and retraining as well as *institutional promotion of vocational training* (loans and subsidies for the development, extension and equipping of establishments which provide vocational training, further training or retraining), and *individual promotion* designed to assist individual persons looking for work to accept a job offer (e.g. travelling costs, removal costs, assistance with equipment). Special emphasis is placed on developing social legislation in the field of promotion of the *integration of the disabled into working life*. Rehabilitation as a whole is the responsibility of all the institutions with social benefit and

service functions. However, the Federal Institute also has a special responsibility for the integration of the disabled into working life. Promoting building construction and work during the winter is another function of the Institute. Incentives and subsidies designed to create jobs are directed towards work which lies in the public interest and which would otherwise not be carried out to the same extent, or not at all.

10.2.3 Income maintenance for unemployed. There are also provisions to compensate for the *loss of income* by employees *due to unemployment*. A difference is made between payments in the event of partial and total unemployment. *Short-time working payments* are made in the event of *partial unemployment* (where temporary cuts are made in normal working hours in a firm) and *bad weather payments* are made if the work of a building contractor has to be interrupted because of bad weather (a special payment for the building trade). Provision for *total unemployment* is made through unemployment benefit and assistance.

Unemployment benefits are based on unemployment insurance – a branch of social insurance. Every employee has to be insured. Should he become unemployed, he receives unemployment benefits. These amount to 68 per cent of his net income. Unemployment benefits are paid for a minimum of 156 days and a maximum of 312 days depending on the duration of previous insurance. Payment depends on whether the employee has been employed for at least 540 days in work requiring insurance during the three years prior to the date on which he is registered as unemployed. If the conditions for this 'claim' to unemployment benefits are not met, the unemployed person may receive unemployment assistance.

In contrast to unemployment insurance, before granting unemployment assistance investigation is made into whether the unemployed person is able to support himself from other sources of income or by drawing on his capital. Detailed rules are laid down at federal level as to the amounts for the claimant, and dependants, together with the income that is to be disregarded. Unemployment assistance is lower (58 per cent of the last wage) than the unemployment benefit and is generally paid for an unlimited period.

10.2.4 Bankruptcy wages guarantee. Recently (1974), the system was augmented by allowances to cover *loss of income caused by a firm's bankruptcy* (Konkursausfallgeld). An employee has the right to claim this money when bankruptcy proceedings have commenced against his employer provided he had been entitled to

payment for his work for the last three months before proceedings commenced. The allowance for loss of income due to bankruptcy corresponds to the net income the employee would have earned in these last three months.

10.3 Financing

The Federal Labour Institute's funds are provided in principle by contributions which are borne half by employees and half by employers. The Federal Government provides funds for unemployment assistance payments. A special levy is imposed on employers to finance the allowance for loss of income due to bankruptcy.

10.4 Organisation

All these functions are carried out by the Federal Labour Institute. This is also a public, autonomous legal body. In view of the wide variety of its functions, its representative administrative structures are made up not only of representatives of insured persons (i.e. employees) and of employers, but also of members of public bodies (e.g. the Länder, local authorities, etc.). The Federal Institute has further social functions such as the payment of children's allowances (see section 9.2 above), individual measures designed to aid severely disabled employees (over and above work promotion for the disabled), etc.

11 General Assistance and Promotion System: Social Assistance

11.1 Social Assistance Forms the Basis of Social Security

Social assistance is often described as the 'safety net beneath the safety net'. This means that social security insurance, social compensation and special assistance and promotion systems form the 'upper safety net' of social security. But those who fall through or outside this net are caught in the 'lower safety net' of social assistance. On the one hand, social assistance aims at guaranteeing everyone a minimum income. However, it also aims at bringing relief to everyone who does not receive assistance within the framework of more specialised systems, the necessary aid in specially difficult circumstances (e.g. illness) and suitable devel-

opment assistance (e.g. for the handicapped, social misfits, etc.). Social assistance law thus falls into two sections: 'Subsistence Assistance' and 'Assistance in Special Circumstances'.

11.2 Types of Services

11.2.1 Subsistence assistance is provided when a person who is seeking help does not have or cannot obtain sufficient funds to ensure an adequate standard of living. The subsistence allowance includes, in particular, the cost of food, accommodation, clothes, personal hygiene, household equipment, heating and the personal needs of every-day life (e.g. reasonable participation in cultural life). The allowance is generally made in accordance with guidelines laid down by the Länder. It is related to the general level of the cost of living (particularly the cost of basic needs), the size of the family, the age of members of the family, as well as many other factors. People who have children to bring up, the disabled, etc. receive supplementary payments. In any event and regardless of the guidelines, it is the social assistance authorities' duty to provide the necessities of life.

In exceptional cases, assistance can be restricted to basic necessities. This is the case if someone deliberately reduces his income or assets in order to receive social assistance, or if, in spite of warnings, someone continually behaves in an irresponsible manner and thus becomes needy or if someone deliberately and without good reason gives up his employment. In such cases care must be taken that the dependants of such persons do not suffer as a result of restrictions.

11.2.2 Assistance in special circumstances is given in a variety of ways: the means to earn or guarantee a living (e.g. loans towards setting up one's own business); preventative medical measures and sickness benefits (generally resembling sickness benefits in the statutory health insurance scheme); family planning and aid for expectant and nursing mothers; integration assistance for the disabled (a particularly well developed and important branch of social assistance in special circumstances);* aid for those suffering from tuberculosis; aid for the blind; care

* Integration aid for the handicapped is, as already mentioned, given within the framework of social insurance, in particular pension insurance, accident insurance, and also within the framework of social compensation legislation and as part of job promotion measures (see Gesetz über die Angleichung der Leistungen zur Rehabilitation – Act relating to the harmonisation of rehabilitation benefits).

assistance (a branch which has gained particular importance because the costs of looking after people affected by age or sickness have rapidly exceeded the financial means of patients and their families);* assistance towards maintaining households (e.g. in the case of a mother falling sick); assistance towards overcoming special social difficulties (for social care and, where possible, integration into society of the homeless, alcoholics, vagrants, drug addicts, discharged criminals, etc.); assistance for the aged.**

11.3 Basic Principles

Three basic principles apply to social assistance:

(1) Officials are obliged to seek out those eligible; the latter may nevertheless apply themselves; (2) social assistance is to be given in accordance with *individual requirements*; (3) it is of a 'subsidiary' nature. This 'subsidiary' nature exists at several levels: (a) the more specialised system of social insurance, social compensation and social assistance and promotion schemes (e.g. training promotion); (b) maintenance obligation for close relatives; (c) third parties' obligations (e.g. the obligations of drivers to compensate for damage caused to the victim of an accident who finds himself in a state of need as a result of the accident); and (d) the needy person's own ability to maintain himself.

The 'subsidiary' nature compared with other social security systems (a) is expressed in the fact that social assistance does not have to render payments or services which other systems guarantee. The 'subsidiary' nature relates to the family's ability to support itself. (b) Generally, it can be demonstrated if members of a family

In all these cases, integration aid for the disabled has a special relationship with the benefits rendered by these systems (e.g. the avoidance of the status of incapacity for work and the correlating pension payments). The Social Assistance Act, however, provides integration assistance without imposing all those specific limitations which are more or less clearly apparent from these specific relationships.

* At present the introduction of special insurance for care (possibly linked with pension or health insurance) is under discussion. People in care are also covered by the Gesetz über Altenheime, Altenwohnheime und Pflegeheime für Volljährige (Heimgesetz) – Old People's and Disabled Persons' Homes and Welfare Accommodation Act (Homes Act). However, this Act protects other people in homes too, especially the aged. See the comprehensive work of H. Rolshoven, *Pflegebedürftigkeit und Krankheit im Recht*, Berlin 1981.

** See also the Homes Act (discussed in the above note).

live together and their requirements and available funds for the whole family are combined and used as a basis for calculation. In addition, persons in need can be advised to press their claim to support from parents or children. The same is true for other responsible persons. (c) The eligible person's ability to support himself (d) is initially taken into account in that an investigation must be made into whether a claimant does not have sufficient income or assets (however the value of a modest sized, owner-occupied house is not taken into account). Further, the person in need must be given the opportunity, or required, to earn his living through work. In case of need, social assistance cannot be denied simply because there is the possibility of funds from another source, but rather social assistance should be paid in the first instance. If initial payments by social assistance are made, then other social insurance organisations, liable relatives, third parties or the claimant using his own assets, are compelled to reimburse the social assistance authorities.

11.4 Financing

Funds for social assistance are provided by the local authorities and the Länder. The Federal Government only participates in the costs for certain groups of people and types of service.

11.5 Organisation

Social assistance is provided at two levels: the lower level is run by the rural districts and independent towns (to a certain degree also by non-independent towns). The upper level assumes widely different forms: some are the responsible Land ministers, special social assistance boards, and regional local authorities. As for youth services, the voluntary organisations play an important complementary role in social assistance.

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