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ADMINISTRATIVE COURTS IN THE
FEDERAL REPUBLIC OF GERMANY*

In West Germany, disputes involving social service benefits are handled in the Social Courts. The Social Court system is an independent network of special administrative courts comprised of forty-nine Social Courts (local level), eleven Land Social Courts (state level) and a Federal Social Court. It deals not only with social insurance (i.e., disability and old-age pension insurance, health insurance, accident insurance, miner's insurance) but also employment insurance and family allowances, war victim benefits, and statutory sickness funds. Separate departments or divisions are set up within the Social Courts ("chambers" in lower courts, "senates" in higher courts) for each of the major categories of jurisdiction.¹

After the initial benefit determination, either a claimant or the public authority can initiate action in the Social Courts. Disputed decisions of an administrative official or insurance fund are subject to mandatory right of appeal to the Social Court when retirement and disability pension benefits, health insurance fund, miner's special benefits, Institute for Labor matters and war pensions are involved.² In other cases, a preliminary hearing is conducted before the dispute enters the Social Court. The preliminary hearing provides a screening mechanism by which administrative authorities can settle claims or revise their rulings and thus lessen pressures on the courts. When a complaint is filed in a Social Court, the judge will often endeavor to bring about a "conciliation" or settlement before proceeding to formal decision.

A decision of the Social Court is appealable to the Land Social Court³ unless specifically precluded (e.g., certain

* From "Social Security Adjudication in Five Nations" by Daniel L. Skoler and Cynthia E. Weixel, 33 Ad. L. Rev. 269, 276-8 (Spring, 1981).

1. W. Heyde, The Administration of Justice in the Federal Republic of Germany 81-83 (gov't-published monograph, 1971); Andre & Burchardt, Employment and Social Security in the Federal Republic of Germany 52 (1980).

2. See, for following text on jurisdiction, procedure and legal rights, Federal Minister for Labor and Social Affairs, Survey of Social Security In The Federal Republic of Germany, 263-265 (1971); E. Kohn, Manual of German Law (1971).

3. "Land" courts are analogous to state courts in the United States. West Germany, like the U.S., is a federal republic. It is composed of eleven member-states known as "Lander" with their own courts and governmental apparatus along with a central federal government and its judicial and executive bodies.

kinds of small lump sum benefits or sickness benefits below a given amount, or disputes on benefit commencement or termination dates). However, even if leave to appeal is not given, one may appeal a decision involving a point of law of fundamental importance as a right. The Land Social Court, unlike many second-tier courts, considers the applicable law and facts of the claim anew. That is, it provides a *de novo* review, with authority to request evidence and expert testimony, remand back to the initial Social Court, or make its own decision (the more common situation).

Appeals to the Federal Social Court must be approved by the Land Social Court but are to be granted when they involve rulings of fundamental legal importance or a deviation from prior Federal Social Court rulings (and refusal to grant may itself be appealed). In some cases and where all parties agree (claimant, government and Social Court), the Land Social Court may be bypassed and an appeal taken directly from the Social Court to the Federal Social Court. Review is restricted in this court to points of law. There exists one additional level of appeal beyond the Federal Social Court and this is to the Federal Constitutional Court. It applies only where the claimant is raising a constitutional challenge to the law as applied in his or her case. Such appeals are not rare occurrences, a recent example being the successful challenge of gender-based distinctions between widower and widow benefits as discriminatory.⁴ However, most are unsuccessful.

Rights retained by claimants are similar in all the Social Courts and procedures parallel those of courts of general administrative jurisdiction. One notable difference, however, is that while claimants before the Social and Land Social Courts may either conduct their own case or be represented by any authorized agent, at the Federal Social Court level claimants not only must be properly represented, but indigent claimants have a right to appointed counsel.

In the Social Courts, hearings are conducted by a combination of professional judges and lay (or honorary) judges. The former are fully trained and qualified judges, appointed pursuant to applicable local and federal procedures. The lay judges sit, respectively, as representatives of insured workers and of employer associations. At all levels the Social Courts typically operate in panels of three, with a legally qualified judge serving as chairman assisted by two lay judges. However, three professional judges plus two lay judges render decisions in the higher courts (Land and Federal).

* * *

4. Cases 1 Bv1 15/71, 19/71, 32/73, 297/71, 315/72, 407/72, 37/73, BGB1.I p. 748, Federal Constitutional Court (March 12, 1975).