H e a d n o t e s

to the judgment of the Second Senate of 5 May 2015

- 2 BvL 17/09 et al. -

1. **The legislature's broad discretion in implementing its duty resulting from Art. 33 sec. 5 of the Basic Law (*Grundgesetz* – GG) to provide alimentation that is appropriate to the office of judges and public prosecutors corresponds to a limited judicial review of the relevant statutory provisions that merely determines whether decisions were based on evidently inadequate or inappropriate considerations. Whether remuneration is evidently insufficient is determined by conducting an overall assessment of various criteria taking into account the specific groups that may be compared.**

2. **To conduct this overall assessment, parameters should be used that are derived from the principle of alimentation and that are economically reasonable to determine a framework with specific numeric values to achieve an alimentation structure and a level of alimentation that are, in principle, constitutional.**

3. **There are five suitable parameters that are based on the Federal Constitutional Court's case-law concerning the principle of alimentation and that have indicative value in determining the level of alimentation required under the Constitution (a clear discrepancy between the development of remuneration of judges and public prosecutors on the one hand and the development of tariff-agreed wages in civil service on the other hand, the money wage index as well as the consumer price index; furthermore an internal comparison of remuneration as well as a cross-comparison with remuneration paid by the Federation or, respectively, by other *Laender*). If a majority of these parameters are fulfilled, the alimentation is presumed to be below the constitutional requirements (1st level of review). This presumption may be further corroborated or rejected by taking into account further alimentation-related criteria in order to strike an overall balance (2nd level of review).**

4. **If the overall assessment shows that, in principle, the challenged alimentation is not appropriate and thus unconstitutional, an assessment is needed as to whether this deficiency can be justified under the Constitution by way of exception. The principle of alimentation that is appropriate to the office is part of the institutional guarantee of a professional civil service enshrined in Art. 33 sec. 5 GG, which is linked to the traditional principles of a professional civil service. To the extent that this principle conflicts with other constitutional values or institutions, it must – in accordance with the principle of practical concordance – be reconciled with them by striking a careful balance (3rd level of review). The prohibition on taking on new debt in Art. 109 sec. 3 first sentence GG is of constitutional value.**

5. **Apart from the constitutionally required minimum alimentation, the existing alimentation of judges and public prosecutors enjoys legal protection in the sense that such protection is of a relative nature (*relativer Normbestandsschutz)*. The legislature may cut or elsewise curtail remuneration if such measures are justified in light of factual reasons.**

6. **When setting the level of remuneration, the legislature must adhere to certain procedural requirements. In particular, the legislature is under a duty to state sufficient reasons.**

Federal Constitutional Court

- 2 BvL 17/09 -

- 2 BvL 18/09 -

- 2 BvL 3/12 -

- 2 BvL 4/12 -

- 2 BvL 5/12 -

- 2 BvL 6/12 -

- 2 BvL 1/14 -

Pronounced
on 5 May 2015
Kunert
Amtsinspektor
as Registrar
of the Court Registry

IN THE NAME OF THE PEOPLE

**In the proceedings
for constitutional review**

of whether the net alimentation the plaintiff received in the 2003 calendar year in remuneration grade R 1 of the Federal Remuneration Scale (*Bundesbesoldungsordnung*) was compatible with Article 33 section 5 of the Basic Law (*Grundgesetz* – GG) in the version applicable until 31 August 2006. This net alimentation was based on §§ 1 section 1 number 2, section 2 number 1, section 3 numbers 2 and 4, 37 section 1, 38 section 1 in conjunction with annex IV number 4 of the Federal Civil Servants' Remuneration Act (*Bundesbesoldungsgesetz* – BBesG) in the versions published on 6 August 2002 and 10 September 2003 in conjunction with § 1 section 1 number 2, §§ 2, 4 section 1 of the Vacation Allowance Act (*Urlaubsgeldgesetz*) in the version published on 16 May 2002 in conjunction with Article 1 number 5 of the Act Adjusting Federal Remuneration and Benefits (*Bundesbesoldungs- und -versorgungsanpassungsgesetz*) 2003/2004, § 85 section 1 of the Federal Civil Servants' Remuneration Act in conjunction with Article 13 number 7 of the Act Adjusting Federal Remuneration and Benefits 2003/2004, § 67 section 1 of the Federal Civil Servants' Remuneration Act and Article 18 section 1 number 1 of the 2003/2004 Act Adjusting Federal Remuneration and Benefits of 10 September 2003 in conjunction with § 1 section 1 number 2, §§ 2, 5, 6 sections 1 and 2 number 1 of the Special Payments Act (*Sonderzahlungsgesetz* – SZG-NRW) of the *Land* of North Rhine-Westphalia of 20 November 2003.

-Order for suspending proceedings and for referral of the case of the Higher Administrative Court (*Oberverwaltungsgericht*) of the *Land* of North Rhine-Westphalia of 9 July 2009 - 1 A 373/08 -

- 2 BvL 17/09 -,

of whether the net alimentation the plaintiff received in the 2003 calendar year in remuneration grade R 1 of the Federal Remuneration Scale was compatible with Article 33 section 5 of the Basic Law in the version applicable until 31 August 2006. This net remuneration was based on § 1 section 1 number 2, section 2 numbers 1 and 3, section 3 numbers 2 and 4, §§ 37 section 1, 38 section 1, 39 section 1, 40 section 1 number 1 and section 2 in conjunction with annex IV number 4 and annex V of the Federal Civil Servants' Remuneration Act in the versions published on 6 August 2002 and 10 September 2003 in conjunction with § 1 section 1 number 2, §§ 2, 4 section 1 of the Vacation Allowance Act in the version published on 16 May 2002 in conjunction with Article 1 number 5 of the Act Adjusting Federal Remuneration and Benefits 2003/2004, § 85 section 1 of the Federal Civil Servants' Remuneration Act in conjunction with Article 13 number 7 of the Act Adjusting Federal Remuneration and Benefits 2003/2004, § 67 section 1 of the Federal Civil Servants' Remuneration Act and in conjunction with Article 18 section 1 number 1 of the Act Adjusting Federal Remuneration and Benefits 2003/2004 of 10 September 2003 in conjunction with § 1 section 1 number 2, §§ 2, 5, 6 sections 1 and 2 number 1, 8 section 1 of the Special Payments Act of the *Land* of North Rhine-Westphalia of 20 November 2003.

-Order for suspending proceedings and for referral of the case of the Higher Administrative Court of the *Land* of North Rhine-Westphalia of 9 July 2009 - 1 A 1416/08 -

- 2 BvL 18/09 -,

of whether the plaintiff's net remuneration in remuneration grade R 1 was compatible with Article 33 section 5 of the Basic Law in the version in force since 1 September 2006. This remuneration was based on

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act (*Besoldungsgesetz*) of the *Land* of Saxony-Anhalt of 3 March 2005, in the time from 1 January 2008 until 30 April 2008,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits (*Gesetz zur Änderung landesbesoldungs- und versorgungsrechtlicher Vorschriften*) of 25 July 2007, in the time from 1 May 2008 until 28 February 2009,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits (*Landesbesoldungs- und -versorgungsanpassungsgesetz*) 2009/2010 of 9 December 2009, in the time from 1 March 2009 until 28 February 2010,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the 2009/2010 Act Adjusting *Land* Remuneration and Benefits of 9 December 2009, in the time from 1 March 2010 until 31 December 2010.

-Order for suspending proceedings and for referral of the case of the Administrative Court (*Verwaltungsgericht*) of Halle of 28 September 2011 - 5 A 206/09 HAL -

- 2 BvL 3/12 -,

of whether the plaintiff's net remuneration in remuneration grade R 1 was compatible with Article 33 section 5 of the Basic Law in the version in force since 1 September 2006. This remuneration was based on

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, in the time from 1 January 2008 until 30 April 2008,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007, in the time from 1 May 2008 until 28 February 2009,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits 2009/2010 of 9 December 2009, in the time from 1 March 2009 until 28 February 2010,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits 2009/2010 of 9 December 2009, in the time from 1 March 2010 until 31 December 2010.

-Order for suspending proceedings and for referral of the case of the Administrative Court of Halle of 28 September 2011 - 5 A 207/09 HAL -

- 2 BvL 4/12 -,

of whether the plaintiff's net remuneration in remuneration grade R 1 was compatible with Article 33 section 5 of the Basic Law in the version in force since 1 September 2006. This remuneration was based on

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, in the time from 1 January 2008 until 30 April 2008,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007, in the time from 1 May 2008 until 28 February 2009,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits 2009/2010 of 9 December 2009, in the time from 1 March 2009 until 28 February 2010,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits 2009/2010 of 9 December 2009, in the time from 1 March 2010 until 31 December 2010.

-Order for suspending proceedings and for referral of the case of the Administrative Court of Halle of 28 September 2011 - 5 A 208/09 HAL -

- 2 BvL 5/12 -,

of whether the plaintiff's net remuneration in remuneration grade R 1 was compatible with Article 33 section 5 of the Basic Law in the version in force since 1 September 2006. This remuneration was based on

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, in the time from 1 January 2008 until 30 April 2008,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007, in the time from 1 May 2008 until 28 February 2009,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits 2009/2010 of 9 December 2009, in the time from 1 March 2009 until 28 February 2010,

- §§ 1 section 1 sentence 1, section 2 sentence 1, 18a - 18c in conjunction with annex 2 number 4 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt of 3 March 2005, amended by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 as well as by the Act Adjusting *Land* Remuneration and Benefits 2009/2010 of 9 December 2009, in the time from 1 March 2010 until 31 December 2010.

-Order for suspending proceedings and for referral of the case of the Administrative Court of Halle of 28 September 2011 - 5 A 216/09 HAL -

- 2 BvL 6/12 -,

of whether the plaintiff's net remuneration in remuneration grade R 3, which in the time from 1 January 2012 until 30 June 2013 was based on §§ 1 section 1, 2a section 1 in conjunction with annex II of the *Land* Civil Servants' Remuneration Act (*Landesbesoldungsgesetz*) of the *Land* of Rhineland-Palatinate in the version of 12 April 2005, amended by Article 1 of the First Act Amending Public Employment Law in Order to Improve Funding of the State Budget (*Erstes Dienstrechtsänderungsgesetz zur Verbesserung der Haushaltsfinanzierung*) of 20 December 2011, was incompatible with Article 33 section 5 of the Basic Law in the version in force since 1 September 2006,

and

of whether the plaintiff's net remuneration, which since 1 July 2013 has been based on §§ 1 section 1, 4 section 1, and 34 in conjunction with annex 6 of the *Land* Civil Servants' Remuneration Act of the *Land* of Rhineland-Palatinate in the version of 18 June 2013, in remuneration grade R 3 was incompatible with Article 33 section 5 of the Basic Law in the version in force since 1 September 2006.

-Order for suspending proceedings and for referral of the case of the Administrative Court of Koblenz of 12 September 2013 - 6 K 445/13.KO -

- 2 BvL 1/14 -

the Federal Constitutional Court – Second Senate –

with the participation of Justices

President Voßkuhle,

Landau,

Huber,

Hermanns,

Müller,

Kessal-Wulf,

König,

Maidowski

held on the basis of the oral hearing of 3 December 2014:

Judgment:

1. The proceedings are joined for a joint decision.

2. a) Appendix 1 annex 2 number 4 (Basic Remuneration Ordinance on Remuneration Grade R from 1 January 2008) to § 18c section 1 of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt (*Landesbesoldungsgesetz für das Land Sachsen-Anhalt* – LBesG LSA, in the version of the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 [Law and Regulations Gazette – *Gesetz- und Verordnungsblatt* of the *Land* of Saxony-Anhalt page 236]) in the version of appendix 1 annex 2 number 4 to Article 1 number 7 of the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 (Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 236),

b) appendix 2 annex 2 number 4 (Basic Remuneration Ordinance on Remuneration Grade R from 1 May 2008) to § 18c of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt (LBesG LSA, in the version of the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 [Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 236]) in the version of appendix 2 annex 2 number 4 to Article 1 number 7 of the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 (Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 236),

c) appendix 1 annex 2 number 4 (Basic Remuneration Ordinance on Remuneration Grade R from 1 March 2009) to § 18c of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt (LBesG LSA, in the version of the 2009/2010 Act Adjusting *Land* Remuneration and Benefits [*Landesbesoldungs- und Versorgungsanpasssungsgesetz* – LBVAnpG 2009/2010] of 9 December 2009 [Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 598]) in the version of appendix 1 annex 2 number 4 to Article 1 number 4 of the 2009/2010 Act Adjusting *Land* Remuneration and Benefits (LBVAnpG 2009/2010) of 9 December 2009 (Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 598),

d) appendix 2 annex 2 number 4 (Basic Remuneration Ordinance on Remuneration Grade R from 1 March 2010) to § 18c of the Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt (LBesG LSA, in the version of the 2009/2010 Act Adjusting *Land* Remuneration and Benefits [LBVAnpG 2009/2010] of 9 December 2009 [Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 598]) in the version of appendix 1 annex 2 number 4 to Article 1 number 4 of the 2009/2010 Act Adjusting *Land* Remuneration and Benefits (LBVAnpG 2009/2010) of 9 December 2009 (Law and Regulations Gazette of the *Land* of Saxony-Anhalt page 598),

are incompatible with Article 33 section 5 of the Basic Law to the extent that they concern remuneration grade R 1.

3. The *Land* legislature of Saxony-Anhalt must enact new provisions that are compatible with the Constitution and that take effect no later than 1 January 2016.

4. Annex IV number 4 (Basic Remuneration Rates of Federal Remuneration Scale R from 1 January 2003) to § 37 section 1 sentence 2 of the Federal Civil Servants' Remuneration Act (BBesG in the version of 6 August 2002 [Federal Law Gazette I page 3020]) as well as annex IV number 4 (Basic Remuneration Rates of Federal Remuneration Scale R from 1 July 2003) to § 37 section 1 sentence 2 of the Federal Civil Servants' Remuneration Act (BBesG in the version of 6 August 2002 [Federal Law Gazette I page 3020]) in the version of appendix 1 to Article 1 number 6 of the 2003/2004 Act Concerning Adjustment of Federal and *Land* Remuneration and Benefits as well as Amendment of Public Employment Law (2003/2004 Act Adjusting Federal Remuneration and Benefits – *Bundesbesoldungs- und -versorgungsanpassungsgesetz*, BBVAnpG 2003/2004) of 10 September 2003 (Federal Law Gazette I page 1798) in conjunction with § 1 section 1 number 2, §§ 2, 5, 6 sections 1 and 2 number 1 of the Special Payments Act (*Sonderzahlungsgesetz*) of the *Land* of North Rhine-Westphalia of 20 November 2003 (Law and Regulations Gazette of the *Land* of North Rhine-Westphalia page 696) are compatible with Article 33 section 5 of the Basic Law (in the version in force until 31 August 2006) to the extent that they concern remuneration grade R 1.

5. a) Annex II number 4 (Basic Remuneration Rates of Remuneration Scale R from 1 January 2012) to § 2a section 1 sentence 1 of the Civil Servants' Remuneration Act of the *Land* of Rhineland-Palatinate (LBsG RP, of 12 April 2005 [Law and Regulations Gazette of the *Land* of Rhineland-Palatinate page 119]) in the version amended by Article 3 of the 2011 *Land* Act Adjusting Remuneration and Benefits (LBVAnpG 2011) of 25 August 2011 (Law and Regulations Gazette of the *Land* of Rhineland-Palatinate page 303),

b) annex II number 4 (Basic Remuneration Rates of Remuneration Scale R from 1 July 2012) to § 2a section 1 sentence 1 of the Civil Servants' Remuneration Act of the *Land* of Rhineland-Palatinate (LBesG RP, of 12 April 2005 [Law and Regulations Gazette of the *Land* of Rhineland-Palatinate page 119]) in the version amended by Article 1 of the First Act Amending Public Employment Law in Order to Improve Funding of the State Budget (DienstRÄndG 2011) of 20 December 2011 (Law and Regulations Gazette of the *Land* of Rhineland-Palatinate page 430),

c) annex 6 number 4 (Basic Remuneration Rates of *Land* Remuneration Scale R from 1 July 2013) to § 34 sentence 2 of the Civil Servants' Remuneration Act of the *Land* of Rhineland-Palatinate (LBesG RP 2013, in the version of the *Land* Act Concerning Reform of Financial Public Employment Law (*Landesgesetz zur Reform des finanziellen öffentlichen Dienstrechts*) [*Dienstrechtsreformgesetz* – DienstrechtsreformG]) of 18 June 2013 (Law and Regulations Gazette of the *Land* of Rhineland-Palatinate page 157)

are compatible with Article 33 section 5 of the Basic Law to the extent that they concern remuneration grade R 3.

R e a s o n s :

A.

The decision concerns several court referrals regarding the issue of whether the so-called "R remuneration" of judges and public prosecutors was constitutional in various *Laender* and at various times. 1

Two referrals by the Higher Administrative Court of the *Land* of North Rhine-Westphalia, 2 BvL 17/09 and 2 BvL 18/09, concern the issue of whether the remuneration under remuneration grade R 1 paid to judges and public prosecutors in North Rhine-Westphalia in 2003 were compatible with the Basic Law. 2

Four referrals by the Administrative Court of Halle (2 BvL 3/12, 2 BvL 4/12, 2 BvL 5/12 and 2 BvL 6/12) concern the issue of whether the remuneration under remuneration grade R 1 paid to judges and public prosecutors in Saxony-Anhalt from 2008 until 3

2010 were compatible with the Basic Law.

The referral by the Administrative Court of Koblenz (2 BvL 1/14) concerns the issue of whether the remuneration under remuneration grade R 3 paid to a chief public prosecutor (*Leitender Oberstaatsanwalt*) in Rhineland-Palatinate since 1 January 2012 is compatible with the Basic Law. 4

I.

[…] 5-62

II.

[…] 63-80

III.

[…] 81-83

IV.

[…] 84

V.

[…] The Court has heard testimony by representatives of the Federal Statistical Office (*Statistisches Bundesamt*) who appeared as expert third parties (§ 27a of the Federal Constitutional Court Act [*Bundesverfassungsgerichtsgesetz* – BVerfGG]). The experts provided testimony on the developments of the standard wages paid to employees in the civil service, of the average gross income of employees in Germany as evidenced by the money wage index, as well as the consumer price index. […] 85

VI.

[…] 86

B.

The referrals are admissible. 87

[…] 88-89

C.

To the extent that they concern remuneration grade R 1, the provisions of the 2005 Civil Servants' Remuneration Act of the *Land* of Saxony-Anhalt (referrals of the Administrative Court of Halle 2 BvL 3/12, 2 BvL 4/12, 2 BvL 5/12 und 2 BvL 6/12) specified by the operative part of this judgment are incompatible with Art. 33 sec. 5 GG. The referrals by the Higher Administrative Court of the *Land* of North Rhine-Westphalia (2 BvL 17/09 and 2 BvL 18/09) and of the Administrative Court of Koblenz (2 BvL 1/14) are unfounded. 90

I.

1. The constitutional standard against which the legal bases for the remuneration of judges and public prosecutors must be measured derives from Art. 33 sec. 5 GG. Pursuant the version of this provision applicable until 31 August 2006, the law governing the civil service shall be regulated with due regard to the traditional principles of the professional civil service (*hergebrachte Grundsätze des Berufsbeamtentums*); this wording was amended by Art. 1 no. 3 of the Act Amending the Basic Law (*Gesetz zur Änderung des Grundgesetzes*) of 28 August 2006 […] to include the words “and developed” (cf. in this respect Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 119, 247 <272 and 273>; 121, 205 <232>). 91

a) The traditional principles of the professional civil service, which – due to their fundamental and structure-defining character – must not only be taken into account but respected (cf. BVerfGE 8, 1 <16>; 117, 330 <349>; 119, 247 <263, 269>; 130, 263 <292>; established case-law), include the principle of alimentation (*Alimentationsprinzip*), which also applies to the remuneration of judges and public prosecutors (cf. BVerfGE 12, 81 <88>; 55, 372 <392>; 107, 218 <238>). Art. 33 sec. 5 GG constitutes directly applicable law, assigns a regulatory task to the legislature, and guarantees the institution of the professional civil service (*institutionelle Garantie des Berufsbeamtentums*) (cf. BVerfGE 106, 225 <232>; 117, 330 <344>; 130, 263 <292>). Furthermore, Art. 33 sec. 5 GG awards civil servants, judges and public prosecutors a right equal to a fundamental right insofar as their subjective legal status is affected (cf. BVerfGE 99, 300 <314>; 107, 218 <236 and 237>; 117, 330 <344>; 119, 247 <266>; 130, 263 <292>). 92

b) The content of the principle of alimentation is influenced by various parameters. It requires the state to appropriately support judges and public prosecutors as well as their families throughout their lifetime as well as to provide them with subsistence that is appropriate to their rank, the responsibility they have in their respective office and to the importance the judicial branch and the professional civil service have to the public. This subsistence must correspond to general economic and financial developments as well as to developments of the standard of living. This requirement links the remuneration to the income and spending situation of the entire populace as well as to the situation of the state finances, i.e. to the financial capability of the state, which is evidenced by the situation of the public funds (cf. BVerfGE 8, 1 <14>; 107, 218 <238>; 117, 330 <351>; 119, 247 <269>; 130, 263 <292>). In fulfilling this obligation to provide alimentation that is appropriate to the office, the legislature must take into account how attractive the offices of judges and public prosecutors are to potential employees with above average qualifications, as well as the public reputation of the offices, and the education and training required of officeholders and their workload (cf. BVerfGE 44, 249 <265 and 266>; 99, 300 <315>; 107, 218 <237>; 114, 258 <288>; 130, 263 <292>). The appropriateness of the alimentation depends on the total amount, which is determined on the basis of the basic remuneration and of further 93

remuneration elements such as special payments or extra pay for certain offices (cf. BVerfGE 99, 300 <321>) – even though these further elements do not as such enjoy protection as a traditional principle of the professional civil service within the meaning of Art. 33 sec. 5 GG (cf. BVerfGE 83, 89 <98>; 117, 330 <350>; 130, 52 <67>).

c) In fulfilling this obligation to provide alimentation that is appropriate to the office, an obligation which follows from Art. 33 sec. 5 GG, the legislature possesses broad discretion (cf. BVerfGE 8, 1 <22 and 23>; 114, 258 <288>; 117, 372 <381>; 121, 241 <261>; 130, 263 <294>). The scope of this discretion covers both the composition and the amount of the remuneration (cf. BVerfGE 81, 363 <375 and 376>; 130, 263 <294>); the latter cannot not be derived directly from the Constitution in the form of a fixed and exactly quantifiable amount (cf. BVerfGE 44, 249 <264 et seq.>; 117, 330 <352>; 130, 263 <294>). Therefore, the guarantee set out in Art. 33 sec. 5 GG according to which alimentation must be appropriate to the office merely sets out a constitutional mandate prompting action by the legislature deciding on budgetary matters (cf. BVerfGE 117, 330 <352>; 130, 263 <294>). Within its discretion, the legislature must adapt the remuneration law to the actual needs and the progressing development of the general economic and financial conditions. However, the solutions so chosen – regarding the composition and the amount of the remuneration – are subject to judicial review. 94

However, it is not the task of the Federal Constitutional Court to review whether the legislature has chosen the most just and reasonable solution that fits the intended purposes best (cf. BVerfGE 103, 310 <320>; 117, 330 <353>; 121, 241 <261>; 130, 263 <294>). 95

Rather, the legislature's broad discretion is reflected by the fact that judicial review is confined in the sense that it is limited to determining whether the provision of ordinary law is evidently inadequate or inappropriate (*Maßstab der evidenten Sachwidrigkeit*) (cf. BVerfGE 65, 141 <148 and 149>; 103, 310 <319 and 320>; 110, 353 <364 and 365>; 117, 330 <353>; 130, 263 <294 and 295>). In the end, material review is limited to establishing whether the remuneration of judges and public prosecutors is evidently insufficient. Whether this is the case is determined on the basis of an overall assessment of different criteria and by taking into account the specifically relevant reference groups (cf. BVerfGE 44, 249 <263, 267 and 268>; 114, 258 <288 and 289>; 130, 263 <295>). 96

2. In order to better conduct this overall assessment, it seems natural to use parameters that are derived from the principle of appropriate alimentation and that are economically reasonable to establish a framework with specific numeric values serving to design the composition of the alimentation and its level in a way that is, in principle, constitutional. There are five suitable parameters that are based on the Federal Constitutional Court's case-law concerning the principle of appropriate alimentation and that have indicative value in determining the level of alimentation required under the Constitution. If a majority of these parameters are fulfilled (1st level of review), the 97

alimentation is presumed to be below the constitutional requirements (a). This presumption may be corroborated or rejected by taking into account further alimentation-related criteria in order to strike an overall balance (2nd level of review) (b).

a) The legislature must consider the criteria relevant for calculating alimentation that is appropriate to the office both when it makes structural adjustments in remuneration law and when it continually adjusts the remuneration amount in the course of the years (cf. BVerfGE 130, 263 <292 and 293>). The Constitution not only refrains from specifying an exact amount of appropriate remuneration, it does not directly indicate the point up to which such remuneration can still be considered appropriate to the office either. Whether the legislature has fulfilled its obligation to adapt the alimentation to the general economic and financial conditions when adjusting the remuneration can be determined only by comparing the long-term development of the remuneration on the one hand with various reference criteria on the other hand over a significant period of time. The threshold values that must generally be used as a basis for this comparison and that indicate whether there is a noticeable discrepancy between the development or amount of remuneration and the relevant reference criterion, are merely of an indicative nature. 98

aa) A clear discrepancy between the development of remuneration of judges and public prosecutors and the results of collective bargaining (*Tarifergebnisse*) in the civil service of the respective *Land*, or – in case of federal remuneration – at federal level is an important parameter in terms of the existence of an evident violation of the principle of alimentation (first parameter). 99

A first reference point for determining whether the alimentation is appropriate to the office results, *inter alia*, from the respective income of employees with a comparable education and function within the civil service (cf. BVerfGE 114, 258 <293>). The income level of these employees with employment contracts under private law holds particular significance for determining the importance of the office and therefore the appropriateness of the remuneration (cf. BVerfGE 114, 258 <293 and 294>; furthermore, Chamber Decisions of the Federal Constitutional Court, *Kammerentscheidungen des Bundesverfassungsgerichts* – BVerfGK 12, 189 <202>), especially since the results of collective bargaining in the civil service constitute an important indicator for the development of the (other) general economic and financial conditions as well as of the general standard of living (cf. Bamberger, *Zeitschrift für Beamtenrecht* – ZBR 2008, p. 361 <363>; Lindner, ZBR 2014, p. 9 <10>). When adjusting the remuneration, the legislature deciding on remuneration matters is not constitutionally required to ensure that the remuneration strictly mirrors the results of collective bargaining in the civil service (cf. BVerfGK 12, 189 <202>) – this is due, *inter alia*, to the fundamental differences between salaries paid on the basis of collective bargaining agreements and remuneration of civil servants. At the same time, however, when calculating the remuneration of civil servants, the legislature may neither disregard the results of collective bargaining in a way that exceeds the differences of the two remuneration systems. If a comparison of the development of civil servant remuneration 100

with the development of the results of collective bargaining in the civil service shows that the remuneration of the civil servants is clearly disconnected, this is incompatible with the guiding function the Constitution assigns to the outcome of collective bargaining for adjustments of the remuneration of civil servants.

This is usually the case if there is a discrepancy between the outcome of collective bargaining and the adjustment of the remuneration in question that amounts to at least 5% of the index value of the augmented remuneration's index value. Considering that standard wages in the civil service have on average increased by 2.35% per year since 1980, such a discrepancy would amount to more than a complete non-adjustment of the remuneration following two successive average increases in standard wages. 101

Based on the respective time periods that are at issue in the proceedings, the review must be extended to the past 15 years (i.e. to roughly half the time a judge or public prosecutor holds office) in order to compensate for random extremes on the one hand and to be able to guarantee methodological comparability on the other. If necessary, one must perform a comparative calculation for an equally long period of time which covers the five years before the above-mentioned 15 years and overlaps with it. Such phased review shall ensure that any statistical extremes are compensated for. 102

bb) A clear discrepancy between the development of remuneration of judges and public prosecutors and the development of the money wage index in the *Land* in question is a further indicator for an evident disregard of the alimentation requirement (second parameter). 103

The duty to adapt remuneration in line with the development of the general economic conditions (cf. BVerfGE 114, 258 <287>; 119, 247 <269>; 130, 263 <292>) requires that remuneration of judges and public prosecutors be put in relation to the income situation and income development of the entire population (cf. BVerfGE 107, 218 <238>). In doing so, one can use as a guideline the money wage index, which is a generally recognised indicator of the development of income and wealth of employees in Germany (cf. Stuttmann, *Deutsches Verwaltungsblatt* – DVBl. 2014, p. 746 <749>). This index measures changes in the average monthly gross income including special payments of employees working full-time, part-time or in marginal employment. It is largely representative of the income development and reflects it transparently, exactly, promptly, and regularly (cf. also *Bundestag* Document, *Bundestagdrucksache* – BTDrucks 18/477, p. 11). Even though the Senate drew on the absolute amount of the net remuneration as the basis for evaluating - in a different context - whether the remuneration is appropriate to the office (cf. BVerfGE 44, 249 <266, 272>; 81, 363 <376>; 99, 300 <321>; 107, 218 <237>; 114, 258 <286>; 117, 330 <350>), one can refer to the gross remuneration in order to ensure comparability within this long-term comparison of the development (in percent) of the money wage index (which is based on the gross income) with the remuneration; due to the relation- 104

al character of this assessment, distortions caused by progressive taxation or by burdens due to social security contributions have no significant impact and could be considered in the necessary overall balancing where appropriate.

A discrepancy of at least 5% of the augmented remuneration's index value between the development of the remuneration and the development of the money wage index within 15 years before the period of time at issue in the proceedings as well as within an overlapping period of time, constitutes a further indicator that the alimentation provided is evidently insufficient. 105

cc) A significant deviation of the development of remuneration of judges and public prosecutors from the development of the consumer price index of the respective *Land*, or - in case of federal remuneration - of the Federation constitutes a further indicator for determining the core content of alimentation (third parameter). 106

When calculating the remuneration, the legislature must consider that the remuneration must provide the judges or public prosecutors with a subsistence that is appropriate to their office, rather than merely sufficient for covering basic needs (cf. BVerfGE 8, 1 <14>; 44, 249 <265 and 266>; 117, 330 <351>; 119, 247 <269>; 130, 263 <292>). The principle of alimentation requires - similar to the situation of a family-related need for support (cf. BVerfGE 44, 249 <275>; 117, 330 <351 and 352>) - that the remuneration be calculated in such a way that they are not used up due to an increase in the general cost of living and that the judges or public prosecutors are not deprived of the possibility of maintaining their standard of living by the loss in spending power. In order to determine the economic situation of the judges or public prosecutors, the legislature must compare the development of their income with the general development of prices as evidenced by the consumer price index. The consumer price index indicates the average development of prices for all goods and services (rent, food, clothing, motor vehicles, hair dressers, cleaners, repairs, energy prices, travel etc.) that private households use for purposes of consumption. 107

If within the time period that is subject of the proceedings the average development of the remuneration falls at least 5% short of the development of the consumer price index in the last 15 years and in a further, equally-long overlapping period of time, this constitutes a further indicator that the alimentation is evidently insufficient. 108

dd) The fourth parameter is an internal comparison of remuneration. 109

From the principle of performance (*Leistungsprinzip*) under Art. 33 sec. 2 GG and the principle of alimentation under Art. 33 sec. 5 GG follows a requirement of fixed intervals between remuneration grades (*Abstandsgebot*) that – notwithstanding its broad discretion – prevents the legislature from permanently levelling the interval between those remuneration grades. Thus, whether provided alimentation is appropriate to the office of judges and public prosecutors also depends on its relation to the remuneration other types of civil servants are provided with (cf. BVerfGE 130, 263 <293 and 294>). Thus, the internal comparison of remuneration constitutes another 110

parameter for further determining the alimentation required by Art. 33 sec. 5 GG (fourth parameter).

Linking the alimentation to service-internal, directly office-related criteria such as rank shall ensure that the remuneration is graded according to the differing significance of the offices. Therefore, its appropriateness to the office also depends on its relation to the remuneration and benefits paid to other types of civil servants. At the same time, this shows that every office holds a particular inherent significance, which must be reflected in the amount of the corresponding remuneration. The value of the office is determined by the responsibility it entails and by the commitment that is required of the officeholder. Remuneration that is appropriate to the "office" is necessarily graded (cf. BVerfGE 114, 258 <293>; 117, 330 <355>; 130, 263 <293>). The organisation of the public administration reflects the fact that offices for which higher remuneration is provided are the ones which perform more important tasks for the state. Therefore, considering the principle of performance and the career principle (*Laufbahnprinzip*), the graded structure of the offices must be accompanied by a grading of remuneration. Comparisons are necessary not only within the individual remuneration scales but also and particularly between the different remuneration scales (BVerfGE 130, 263 <293>). On this basis, remuneration that is appropriate to the office must be calculated in a way that enables the judges and public prosecutors to maintain a standard of living that corresponds to the importance of their office (cf. BVerfGE 117, 330 <355>). 111

Hence, a notable decrease of the intervals between the remuneration grades' gross remuneration due to varying linear adjustments in individual remuneration grades or due to delayed remuneration adjustments indicates a violation of the requirement of fixed intervals. As a rule, there is a violation if the intervals between two comparable remuneration grades have decreased by at least 10% in the past five years. 112

ee) The Act Amending the Basic Law of 28 August 2006 […] (re-)transferred the legislative competence for the remuneration and benefits paid to judges/civil servants to the *Laender*. The principle of equality (Art. 3 sec. 1 GG) does not generally prevent the *Land* legislature from enacting provisions that differ from those of other *Laender* thereby in order to take into account the different economic and financial situation of the *Laender* (cf. BVerfGE 30, 90 <103>; 93, 319 <349>). Nonetheless, the *Laender*'s power vested in them by the reform of competences in the Basic Law and allowing them to enact their own remuneration provisions does not allow for an unlimited divergence of the remuneration paid by the Federation and the *Laender*. In that respect, Art. 33 sec. 5 GG thus limits the legislature's discretion yet without proclaiming a principle of homogeneity *(Homogenitätsprinzip*) in remuneration law. Against this backdrop, a cross-comparison with remuneration provided by the Federation and by other *Laender* constitutes a further indicator for determining the core content of alimentation (fifth parameter). 113

The alimentation provided must enable judges and public prosecutors to completely 114

dedicate themselves to their judicial tasks and the civil service as a lifelong profession and to contribute to the fulfilment of the tasks incumbent upon them in legal and economic security and independence (cf. BVerfGE 44, 249 <265 and 266>; 114, 258 <287 and 288>; 119, 247 <269>; 130, 263 <293>). Therefore, it does not merely secure their subsistence but also - considering the professional civil service's importance for the state - fulfils the task of ensuring high-quality work (cf. BVerfGE 114, 258 <294>; 130, 263 <293>). In order for the offices of judges and public prosecutors to be attractive to potential employees with above-average qualifications the question of whether the remuneration is appropriate to the office must also be determined based on the remuneration's relation to salaries paid for comparable work outside the civil service and that requires similar qualifications (cf. BVerfGE 114, 258 <293 and 294>; 117, 330 <354>; 119, 247 <268>; 130, 263 <293 and 294>; BVerfGK 12, 189 <202>; 12, 253 <263 and 264>). Apart from a comparison with the salary systems in the private sector (cf. BVerfGE 130, 263 <293 and 294>) one must also consider the remuneration paid in other *Laender*. Therefore, – particularly since past experience shows that graduates are highly flexible – the attractiveness of the office of judge / public prosecutor also depends on the remuneration's amount compared to the remuneration provided in other *Laender*. Limiting the evaluation to the economic and financial situation of the individual *Land* in question would disregard that under the Basic Law's federal system the ideal fulfilment of a *Land*'s tasks in a situation of limited human resources requires competing with other state employers. Therefore, apart from the comparison with the private sector on the federal level, one must also perform a comparison with the conditions of the civil service and remuneration at federal level and in the other *Laender*.

A considerable discrepancy in terms of remuneration compared with the average remuneration of the respective remuneration grade at the federal level or in the other *Laender* is an indicator that alimentation is no longer fulfilling its function of ensuring high-quality work. The question of when discrepancies are considerable cannot be answered in general terms. If the gross annual income in question including possible special payments [*translator's note: e.g. holiday or Christmas bonuses, which are paid independently of the judges and public prosecutors' performance*] is 10% below the average paid by other *Laender* during the same period - which, measured by the remuneration in question, will usually correspond to more than one month's remuneration - this also indicates that the level of alimentation is too low to meet the constitutional requirements. 115

b) If at least three of the above-mentioned five parameters are met, it can be assumed that the alimentation level is too low to meet the constitutional requirements because it fails to enable judges and public prosecutors to appropriately partake of the general development of economic and financial conditions and of the standard of living. Such a presumption can be refuted or in fact corroborated by taking into account further alimentation-related criteria in order to strike an overall balance. Apart from the public reputation of the office in question and the education and demands re- 116

quired of the officeholder (cf. BVerfGE 44, 249 <265>; 99, 300 <315>; 114, 258 <288>; 130, 263 <292>) the list of such criteria includes in particular the development of the hired applicants' qualifications (aa), the particular nature of the tasks and responsibilities of a judge or public prosecutor (bb), developments in the areas of health-related support (*Beihilfe*) (cc) and benefits (*Versorgung*) (dd), as well as a comparison with the average gross remuneration paid to employees liable to social security contributions with comparable education and responsibility (ee).

aa) The question of whether alimentation fulfils its function of ensuring high-quality work (cf. BVerfGE 114, 258 <294>; 130, 263 <292>) also depends on whether the *Land* in question succeeds in attracting personnel for its higher judicial service that is qualified above average. The legal qualifications of the recruited judges and public prosecutors are primarily evidenced by the results of the first state examination in law (*Erste Prüfung*) and the second state examination in law (*Zweite juristische Staatsprüfung*). If over a period of five years the grade point average of the persons hired considerably decreases - also in comparison with the results achieved by all graduates in the compared period of time - and/or the entry requirements for the higher judicial service are notably lowered one can generally conclude that the design of the remuneration does not suffice to guarantee the attractiveness of the office of judge or public prosecutor. 117

bb) The amount of alimentation paid must also reflect the particular nature and responsibilities of an officeholder. 118

(1) Alimentation paid to civil servants enables them to fully dedicate themselves to the civil service as a lifelong profession. It gives them legal and economic independence to help fulfil the duty - assigned to the professional civil service by the Basic Law - of contributing to ensuring, in the face of the interplay of political forces, a stable and law-abiding administration (cf. BVerfGE 119, 247 <264>). Therefore, the principle of alimentation performs a protective function for the civil servants (cf. BVerfGE 130, 263 <299>). 119

(2) Traditional principles of the status law of judges, which the legislature must take into account, include in particular the principle of substantive and personal independence (cf. BVerfGE 12, 81 <88>; 55, 372 <391 and 392>; BVerfG, Order of the Third Chamber of the Second Senate of 29 February 1996 - 2 BvR 136/96, *Neue Juristische Wochenschrift* – NJW 1996, p. 2149 <2150>; BVerfGK 8, 395 <399>). According to Art. 97 sec. 1 GG, judges must be "independent and subject only to the law". Such substantive independence is ensured if judges can adopt decisions without being bound by instructions (cf. BVerfGE 14, 56 <69>). The institution of substantive independence is protected by the guarantee of personal independence enshrined in Art. 97 sec. 2 GG (cf. BVerfGE 4, 331 <346>; 14, 56 <70>; 17, 252 <259>; 18, 241 <255>; 26, 186 <198 and 199>; 42, 206 <209>; 87, 68 <85>). 120

Judicial independence must also be assured by the remuneration of judges (cf. BVerfGE 12, 81 <88>; 26, 141 <154 et seq.>; 55, 372 <392>; 107, 257 <274 and 121

275>). The manner in which remuneration and benefits of judges are regulated is of great significance for the inner relationship between the judges and their office and for the impartiality with which they maintain their judicial independence (cf. BVerfGE 26, 141 <155 and 156>). Setting the remuneration at an appropriate amount ensures that judges are able to make independent decisions in accordance with the law and their conscience (cf. BVerfGE 107, 257 <274 and 275>; cf. on the international perspective the study of the European Commission for the Efficiency of Justice of the Council of Europe of 9 October 2014 ”Report on European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice”).

cc) Furthermore, when determining whether the alimentation provided is appropriate to the office one must take into account the level of health-related support. The state is required to pay health-related support because of his duty of care (*Fürsorgepflicht*) (cf. BVerfGE 83, 89 <99>; 106, 225 <232>). The current system of health-related support is not actually a component of the civil servants’ alimentation required by the Constitution; the Constitution merely requires that alimentation appropriate to the office cover the cost of health insurance that is necessary for averting illness-related burdens that are not compensated for by payments made in accordance with the duty of care (cf. BVerfGE 83, 89 <98>; 106, 225 <233>). However, alimentation is insufficient if the health care premiums necessary for averting illness-related burdens not compensated for by health-related support payments assume such proportions that an appropriate subsistence for the civil servant or recipient of benefits is no longer ensured. Under the principle of appropriate alimentation it is necessary to ensure - similar to the situation of family-related burdens due to alimony payments - that the general components of remuneration are not used up by illness-related expenses (cf. BVerfGE 117, 330 <351 and 352>; BVerfGK 12, 253 <260 and 261>). Should that be the case, the Constitution may require a correction of the remuneration and benefit laws that further define the principle of alimentation (cf. BVerfGE 58, 68 <78>; 106, 225 <233>). The same holds true if the legislature, through a large number of individual cuts introduced over time - each of which being constitutional if assessed individually, inappropriately curtails the health-related support and thereby the remuneration the judge/civil servant disposes of to ensure general subsistence (“salami tactics”). 122

dd) Neither the benefits nor the remuneration of civil servants are payments provided for specific services performed by the civil servants. Rather, both represent a return service of the state employer for the fact that the civil servants dedicate themselves to the state employer with their entire personality and fulfil their duty according to the respective requirements (cf. BVerfGE 39, 196 <200 and 201>; 121, 241 <261>; cf. on the appropriate term of a “correlate” provided by the state employer in return for the duty of the civil servants to dedicate their entire work capacity to the state employer, - a duty which follows from the appointment as civil servant (an office generally held for life) BVerfGE 37, 167 <179>, 70, 69 <80>; 119, 247 <264>). Benefits and remuneration are components of the overall alimentation paid to civil servants and are 123

guaranteed from the moment the status of civil servant is assumed (cf. BVerfGE 114, 258 <298>). The state employer is required to guarantee civil servants' lifelong subsistence - thus also after their retirement (cf. BVerfGE 76, 256 <298>; 114, 258 <298>). Currently, it fulfils this obligation by providing comprehensive alimentation. Civil servants are not required to provide for their own pension plans or those of their surviving dependents (cf. BVerfGE 39, 196 <202>; 114, 258 <298>); instead the gross income of the active civil servants are already set at a lower amount in order to account for future pension claims (cf. BVerfGE 105, 73 <115, 125>; 114, 258 <298>). Cuts in the field of benefits force civil servants to spend more of their income for private pension plans so as not to suffer severe reductions in their standard of living after retirement. This too can result in a situation in which alimentation levels fall short of constitutional requirements.

ee) Lastly, in order for the alimentation to fulfil its task of ensuring high-quality work, the question of whether the remuneration is appropriate to the office must also be determined based on the remuneration's relation to salaries paid for comparable work outside the civil service and requiring similar qualifications (cf. BVerfGE 114, 258 <293 and 294>; 117, 330 <354>; 119, 247 <268>; 130, 263 <293 and 294>; BVerfGK 12, 189 <202>; 12, 253 <263 and 264>). Whether the alimentation is appropriate to an office that is intended to be attractive to professionals with above-average qualifications can also be determined by comparing the amount of the remuneration with the average gross remuneration paid to employees liable to social security contributions with comparable qualifications and responsibility in the private sector; in doing so, one must consider the particularities of the status of civil servants as well as of the civil service's system of remuneration and benefits (cf. BVerfGE 130, 263 <294>). 124

3. If the overall assessment shows that, in principle, the challenged remuneration is lower than constitutionally required, one needs to determine whether this deficiency can be justified under the Constitution by way of exception. The principle of alimentation that is appropriate to the office is part of the institutional guarantee of a professional civil service enshrined in Art. 33 sec. 5 GG, which is linked to the traditional principles of a professional civil service. To the extent that this principle conflicts with other constitutional values or institutions, it must – as is true everywhere – be reconciled with them by striking a careful balance in accordance with the principle of practical concordance (3rd level of review). 125

a) The prohibition on taking on new debt in Art. 109 sec. 3 sentence 1 GG is of constitutional value […]. According to Art. 109 sec. 3 sentence 1 GG, the budgets of the Federation and the *Laender* shall generally be consolidated without revenue from credits (so-called "debt brake"). By way of exception, new loans are permissible in case of market developments that deviate from normal conditions (cf. Art. 109 sec. 3 sentence 2 var. 1 GG) as well as in cases of natural disasters or unusual emergency situations (cf. Art. 109 sec. 3 sentence 2 var. 2 GG). The budgets of the *Laender* for the fiscal years 2011 to 2019 must be designed to ensure that the requirement in Art. 109 sec. 3 sentence 5 GG – no structural net borrowing – will be met in the fiscal year 126

2020 (cf. Art. 143d sec. 1 sentence 4 GG). In doing so, the legislatures of the *Laender* deciding on budgetary matters must take into account the aim of consolidating the budgets in the year 2020. Art. 143d sec. 1 sentence 4 GG does not further specify the obligations to achieve this goal (cf. Kube, in: Maunz/Dürig, Grundgesetz, Art. 143d para. 14 [January 2010] referring to *Bundestag* Document 16/12410, p. 13; Reimer, in: Epping/Hillgruber, BeckOK GG, Art. 143d para. 9 [December 2014]). Only those *Laender* that receive consolidating aids from the federal budget under Art. 143d sec. 2 sentence 1 GG are required to completely eliminate their financial deficits until 2020 (cf. Art. 143d sec. 2 sentence 4 GG).

b) The legislature deciding on budgetary matters must take the advance effect of the prohibition on structural net borrowing enshrined in Art. 143d sec. 1 sentence 4 GG into account when adjusting the remuneration of judges and civil servants. However, notwithstanding the fact that the new version of Art. 109 sec. 3 GG imposes stricter requirements for taking on new debt (cf. BVerfGE 129, 124 <170>; 132, 195 <245>), neither the state's budgetary situation nor the aim of budget consolidation alone can restrict the principle of appropriate alimentation. Otherwise the protective function of Art. 33 sec. 5 GG would be to no avail (cf. BVerfGE 44, 249 <264 and 265>; 76, 256 <311>; 81, 363 <378>; 99, 300 <320>; 114, 258 <291>; 117, 372 <388>; established case-law). Nor does the special relationship of loyalty require judges and civil servants to contribute more than others to budget consolidation (cf. Wolff, ZBR 2005, p. 361 <368>). Restrictions on the principle of appropriate alimentation purely for financial reasons may be justified to deal with the exceptional situations enumerated in Art. 109 sec. 3 sentence 2 GG if, as must be evidenced by a sound reasoning provided in the preparatory material, the legislative decision in question is part of a coherent and comprehensive concept for budget consolidation. 127

4. Apart from the constitutionally required minimum alimentation whose nature is determined by aspects set out in the overall assessment described above, the existing alimentation enjoys legal protection in the sense that such protection is of a relative nature (*relativer Normbestandsschutz*). The legislature may cut or elsewise curtail remuneration if such measures are justified in light of factual reasons (cf. BVerfGE 8, 1 <12 et seq.>; 18, 159 <166 and 167>; 70, 69 <79 and 80>; 76, 256 <310>; 114, 258 <289>; 130, 263 <295 and 269>). Cuts or other curtailing changes may be justified by reasons that are inherent to the system of alimentation for civil servants (cf. BVerfGE 76, 256 <311>; 114, 258 <288 and 289>). In addition, financial considerations may play a role (cf. BVerfGE 44, 249 <264 and 265>; 76, 256 <311>; 81, 363 <378>; 99, 300 <320>; 114, 258 <291>; 117, 372 <388>; established case-law); however, the aim to reduce expenses cannot serve as a legitimate reason to cut the remuneration (cf. BVerfGE 76, 256 <311>; 114, 258 <291 and 292>), unless it forms part of a coherent overall concept to achieve the budget consolidation objective enshrined in Art. 109 sec. 3 GG. 128

5. When setting the level of remuneration, the legislature has to adhere to certain procedural requirements (cf. BVerfGE 130, 263 <301 and 302>). In particular, the 129

legislature is under a duty to state reasons (cf. BVerfGE 130, 263 <302>).

The legislature is required to state reasons for the way the remuneration levels are adjusted as early as during the legislative procedure.This statement of reasons during the legislative procedure must reflect how the parameters considered and eligible to be considered to determine the constitutionally required extent of the adjustment of remuneration were established and balanced. Mere justifiability does not satisfy the constitutional requirements as to proceduralisation. The gain in rationalisation aimed at by the balancing function of proceduralisation can, in essence, be accomplished only if the necessary facts are established in advance and if this process is then documented within the reasons for the legislative act – also with a view to enabling legal protection. Proceduralisation aims at the process of taking decisions, not at their presentation, i.e. explanations provided afterwards (cf. Schmidt-Aßmann, in: Hoffmann-Riem/Schmidt-Aßmann/Voßkuhle, Grundlagen des Verwaltungsrechts, vol. II, 2nd ed. 2012, § 27 para. 61). 130

II.

Measured against these standards, the requirements imposed by Art. 33 sec. 5 GG in the version applicable since 1 September 2006 were not fulfilled in proceedings 2 BvL 3/12 through 6/12 (referrals by the Administrative Court of Halle). An overall assessment of the parameters relevant for determining the remuneration level shows that the remuneration paid under remuneration grade R 1 are evidently insufficient (1.). In proceedings 2 BvL 17/09 and 18/09 (referrals by the Higher Administrative Court of the *Land* of North Rhine-Westphalia) as well as 2 BvL 1/14 (referral by the Administrative Court of Koblenz), however, the amount of remuneration paid in the periods of time that are at issue in the respective proceedings is not objectionable under constitutional law (2. and 3.). 131

1. The basic remuneration of Remuneration Ordinance R paid in remuneration grade R 1 in Saxony-Anhalt from 2008 to 2010 does not suffice to provide judges or public prosecutors with subsistence that, when measured in terms of the responsibility they have in their respective office and in terms of the importance these offices have to the public, is appropriate in light of the development of the general economic and financial conditions and of the standard of living. When setting the basic remuneration rates, the legislature did not sufficiently account for the need to ensure that the office of judge or public prosecutor is attractive for potential employees with suitable qualifications, for the public reputation of these offices, for the demands and education required of judges and public prosecutors, or for the responsibility they bear. This finding is mainly based on a comparison of the development of basic remuneration rates in addition to special payments in remuneration grade R 1 with the development of the income development of employees in the civil service, and with the development of the money wage index and the consumer price index (a) and is corroborated by considering other alimentation-related criteria in order to strike an overall balance (b). This finding is not rebutted by colliding constitutional law (c). 132

a) There are indicators suggesting an evident inappropriateness of alimentation when comparing the adjustment of remuneration with the development of income in the civil service, and with the development of the money wage index and the consumer price index in Saxony-Anhalt. 133

aa) The development of the basic remuneration rates in addition to special payments paid under remuneration grade R 1 in Saxony-Anhalt from 1994 to 2008, 1995 to 2009, and 1996 to 2010, i.e. the periods of time that are at issue in these proceedings, was as follows (alimentation paid to families with many children is not subject of these proceedings [cf. on that issue BVerfGE 99, 300]): […] 134

Under § 4 sec. 1 no. 3 of the Special Payments for Civil Servants Act of Saxony-Anhalt (*Beamtenrechtliches Sonderzahlungsgesetz Sachsen-Anhalt* – BSZG-LSA), civil servants and judges in remuneration grade R 1 received as of 1 December 2003 an annual special payment of EUR 1,500. The Special Payments Act (*Sonderzuwendungsgesetz* – SoZuwG), which provided that in the year 2002 beneficiaries should receive – for the last time – an annual special payment of 86.31% of the remuneration paid in December of 2002 (cf. § 6 sec. 1 SoZuwG), had been repealed by Art. 18 sec. 1 no. 1 BBVAnpG 2003/2004. The 2005/2006 Act Accompanying the Budget (*Haushaltsbegleitgesetz*) of 17 December 2004 (Law and Regulations Gazette of the *Land* of Saxony-Anhalt – GVBl, page 834) amended § 2 sec. 2 BSZG-LSA to the effect that instead of the annual special payment of EUR 1,500 civil servants and judges should receive an annual special payment of EUR 25.56 for each child for which they were entitled to family allowance in the month of December. Cutting this special payment equalled a fictitious remuneration cut of 6.71% for the year 2005. Under § 3 sec. 3 sentence 1 of the Second Regulation on the Transfer of Remuneration (*Zweite Besoldungsübergangsverordnung*), civil servants and judges who had acquired their qualifications in former West-Germany received a special payment of 75% of the remuneration they received in December; therefore, this group's fictitious remuneration cut amounted to 5.88%. 135

The basic remuneration rates in remuneration grade R 1 were raised by 2.9% with effect from 1 May 2008 (cf. § 18b sec. 1 no. 1 LBesG LSA 2005, introduced by the Act Amending *Land* Provisions Governing Remuneration and Benefits of 25 July 2007 [GVBl p. 236]). With effect from 1 March 2009, the basic remuneration rates were raised by EUR 40 and the thus augmented basic remuneration rates were raised by 3.0% (cf. § 18b sec. 1 sentences 1 and 2 no. 1 LBesG LSA 2005 in the version of the 2009/2010 Act Adjusting *Land* Remuneration and Benefits [LBVAnpG] of 9 December 2009 [Law and Regulations Gazette of the *Land* of Saxony-Anhalt p. 598]). With effect from 1 March 2010, the basic remuneration rates were raised by 1.2% (cf. § 18b sec. 2 no. 1 LBesG LSA 2005 in the version of LBVAnpG 2009/2010 of 9 December 2009 [GVBl p. 598]). 136

Therefore, if one takes as a basis of calculation an original special payment of 86.31% of the basic remuneration paid in December, remuneration in remuneration 137

grade R 1 was raised by 16.18% during the time period from 1994 to 2008 and by 17.22% if one bases the calculation on an original special payment of 75%.

In the time period from 1995 to 2009, remuneration was raised by 19.67% if one bases the calculation on an original special payment of 86.31% of the basic remuneration paid in December and by 20.74% if one bases the calculation on an original special payment of 75%. 138

In the time from 1996 to 2010, remuneration was raised by 15.05% if one bases the calculation on an original special payment of 86.31% of the basic remuneration paid in December and by 16.08% if one bases the calculation on an original special payment of 75%. 139

[…] 140

bb) The income of employees in the civil services of the *Laender* […] were raised […] by 25.23% in the time from 1994 to 2008, by 26.44% in the time from 1995 to 2009, and by 24% in the time from 1996 to 2010. 141

cc) In order to determine the money wage index in Saxony-Anhalt for the time prior to the year 2006, the Federal Statistical Office used the national accounts of the *Laender* according to the classification of the economic sectors […]. Its determination of the money wage index starting from the year 2007 was based on the quarterly earnings survey. […] According to this data, the average gross monthly income increased by 34.17% in the time from 1994 to 2008, by 28.26% in the time from 1995 to 2009, and by 23.5% in the time from 1996 and 2010. 142

dd) The consumer price index in Saxony-Anhalt increased […] by 29.84% in the time from 1994 to 2008, by 25.74% in the time from 1995 to 2009, and by 24.5% in the time from 1996 to 2010. 143

ee) Therefore, the discrepancy between the development of tariff-agreed wages, of the money wage index, and of the consumer price index (100 + x) on the one hand and the development of the remuneration provided to judges and public prosecutors (100 + y) on the other is as follows if put into relation to the development of the remuneration paid to judges and public prosecutors: (100+x-[100 + y][100 + y]*100). Taking a basis of 100 in the year 1993, the development of remuneration in the year 2008 fell short of the raise of tariff-agreed wages by 7.79%, of the increase of the money wage index by 15.48%, and of the increase of the consumer price index by 11.76% if one takes into account an original special payment amounting to 86.31% of a monthly remuneration. If one takes into account a special payment of 75% of a monthly remuneration, the discrepancy is 6.83% in relation to the development of tariff-agreed wages, 14.46% in relation to the increase of the money wage index, and 10.77% in relation to the increase of the consumer price index. 144

Proceeding from a basis of 100 in the year 1994, remuneration paid in 2009 fell short of the raise of tariff-agreed wages by 5.66%, of the increase of the money wage 145

index by 7.18%, and of the increase of the consumer price index by 5.07% if one takes into account an original special payment of 86.31% of a monthly remuneration. If one calculates on the basis of a special payment of 75% of a monthly remuneration, the discrepancy is 4.72% in relation to the development of tariff-agreed wages, 6.23% in relation to the increase of the money wage index, and 4.14% in relation to the increase of the consumer price index.

Proceeding from a basis of 100 in the year 1995, the alimentation paid in 2010 fell short of the raise of tariff-agreed wages by 7.78%, of the increase of the money wage index by 7.34%, and of the increase of the consumer price index by 8.21% if one takes into account an original special payment of 86.31% of a monthly remuneration. If one calculates on the basis of a special payment of 75% of a monthly remuneration, the discrepancy is 6.82% in relation to the development of tariff-agreed wages, 6.39% in relation to the increase of the money wage index, and 7.25% in relation to the increase of the consumer price index. 146

There is no need for an additional graded review, since there is no reliable and conclusive data that could be used for a past and overlapping period of time. […] 147

ff) Therefore, an overall assessment of the indicated parameters gives rise to the presumption that, from 2008 to 2010, the basic remuneration rates of remuneration grade R 1 in Saxony-Anhalt dropped below the constitutionally required minimum alimentation level that is appropriate to the office held. This also holds true in cases of judges and public prosecutors who received a special payment in the amount of 75 percent […] in which the discrepancy between the development of remuneration on the one hand and the developments of standard wages and of the consumer price index in the civil service on the other does not cross the threshold of 5% for the time from 1995 to 2009. In such cases, too, there is an exceptional presumption of insufficient alimentation, because the combined effect of two measures of the legislature deciding on budgetary matters, which if taken by themselves negatively affect the level of alimentation, resulted in a comparably large increase in remuneration particularly for this period of time. On the one hand, judges and public prosecutors merely received […] reduced special payments […]. On the other hand, the basic remuneration rates in remuneration scale R […] were increased with effect only of 1 January 1995 and not of 1 October 1994 as was the case with the remuneration scales up to and including A 8 […]. While, by itself, this staggered remuneration adjustment is not objectionable under constitutional law it leads to a distortion of the development of remuneration, which must not affect the overall assessment to the detriment of the remuneration recipients. Had the legislature deciding on budgetary matters raised the remuneration in 1994 already, the remuneration would have increased by only 18.37% in the time from 1995 to 2009. Had that been the case, the discrepancy between the development of remuneration and the development of tariff-agreed wages in the civil service would have been 6.82% and the discrepancy between the development of remuneration and the development of the consumer price index would have been 6.23%. 148

b) The presumption that the remuneration paid in remuneration grade R 1 in Saxony-Anhalt from 2008 to 2010 was evidently inappropriate is corroborated when striking an overall balance by taking into account further alimentation-relevant parameters. 149

aa) The office of judge or public prosecutor in remuneration grade R1 requires high academic standards and qualifications of the officeholder. 150

§ 5 sec. 1 first half sentence of the German Judiciary Act (*Deutsches Richtergesetz* – DRiG) […] provides that whoever concludes his or her legal studies at a university by taking the first state examination in law in addition to concluding a subsequent two-year-period of preparatory training followed by the second state examination in law shall be qualified to hold judicial office; the same goes for the qualification to hold the office of public prosecutor (cf. § 122 sec. 1 DRiG). In principle, university studies shall last for four years (cf. § 5a sec. 1 first half sentence DRiG). The period of preparatory training shall last for two years (cf. § 5b sec. 1 DRiG). § 10 sec. 1 DRiG provides that whoever has worked as a judge for at least three years after acquiring the qualification to hold judicial office may be appointed a judge for life; having worked as a public prosecutor is considered equal to having worked as a judge (cf. § 122 sec. 2 DRiG). 151

The administrations of the judiciary of the *Laender* require a certain minimum grade in the first state examination and the second state examination in order to consider someone for higher judicial service. The *Land* of Saxony-Anhalt has not published its entry requirements to that end. According to a document from the Ministry of Justice of Saxony-Anhalt […], applicants for the higher judicial service in Saxony-Anhalt "have in recent years (…) in principle been required to have passed the two examinations with outstanding results", i.e. they must have achieved at least 9 points in each examination […]. These requirements are met only by a small number of graduates. […] Against this backdrop, remuneration has to be designed in a way that generally renders them attractive to this relatively small group of highly qualified graduates. 152

bb) The office of judge or public prosecutor involves numerous demanding tasks. 153

(a) Art. 92 first half sentence GG provides that the judicial power is vested in the judges. Within the Basic Law's system under the rule of law, the judiciary is tasked in particular with providing effective legal protection and thereby contributing to the realisation of material justice. A full review of disputed circumstances on a factual and legal level within an orderly procedure and the subsequent binding decision by an impartial authority permit the law to be executed and legal peace to be achieved (cf. also BVerfGE 54, 277 <291>; 103, 111 <137 and 138>). In addition, the Basic Law assigns special tasks to the courts that underline the judiciary's importance within the constitutional system. A large number of guarantees of legal recourse in specific cases expressly task the courts with providing legal protection – usually *a posterior* (cf. only Art. 13 sec. 4 sentence 2 second half sentence GG, Art. 14 sec. 3 sentence 4 GG, Art. 15 sentence 2 GG, Art. 19 sec. 4 GG, Art. 34 sentence 3 GG, Art. 41 sec. 2 GG, and Art. 93 secs. 1 and 2 GG). Moreover, in Art. 13 secs. 2 to 5 GG and Art. 104 154

secs. 2 to 4 GG the Basic Law contains preventive requirements of a judicial decision, which require for the purpose of protecting the fundamental rights that the severe measures indicated in those provisions be preventively reviewed by an independent and neutral authority (cf. BVerfGE 115, 166 <196>).

In order that they be able to fulfil these judicial tasks, Art. 97 secs. 1 and 2 GG guarantee the judges' substantive and personal independence; this independence characterises a judge's work (cf. BVerfGE 4, 331 <346>; 27, 312 <322>; 87, 68 <85>; 103, 111 <140>; established case-law). 155

The attribution of pivotal responsibilities within the constitutional order founded on the rule of law, combined with the unique autonomy granted by Art. 97 GG has to be reflected in the way in which the value of an office is determined within the remuneration system. 156

(b) The public prosecutor is part of the civil service and also a necessary organ of the criminal justice system (cf. BVerfGE 32, 199 <216>). Being obliged to remain objective (§ 160 sec. 2 of the Code of Criminal Procedure, *Strafprozessordnung* – StPO), the public prosecutor guarantees that the rule of law is observed and that proceedings are conducted according to the law; being the party in charge of the prosecution in criminal proceedings, the prosecutor ensures that the criminal justice system works effectively. The prosecutor's role is not limited to the initial proceedings but also significant when it performs its tasks during appeal proceedings (cf. § 296 sec. 2 StPO, § 301 StPO [cf. BVerfGE 133, 168 <219 para. 92>]). Being the "guardian of the law", it is tasked with ensuring that the constitutional requirements as to criminal proceedings are met (cf. BVerfG, loc. cit., p. 220 para. 93). This particular position of the prosecutor in the constitutional architecture also has to be taken into account when determining the remuneration. 157

cc) An overall assessment to determine the appropriateness of the alimentation available for judges and public prosecutors has to take account of the noticeable cuts in the field of benefits. Apart from the fact that the annual raise of remuneration and benefits […] was reduced by 0.2% with effect from 1 January 1999 in order to create reserves for benefits (*Versorgungsrücklage*) […], relevant cuts included the reduction of pensions from 75% of the pensionable remuneration to 71.75% […]. In the past, these cuts - when assessed individually - have been considered to be unobjectionable under the Constitution (cf. BVerfGK 12, 189 – reserves for benefits [*Versorgungsrücklage*]; BVerfGE 114, 258 – pension rate cut [*Absenkung Ruhegehaltssatz*]). Nevertheless, particularly the reduction of the pension level and the resulting necessity that judges and public prosecutors have to contribute a greater amount themselves within their pension scheme - especially in light of the increase in life expectancy - lead to a situation in which further parts of their remuneration are used up. This in turn has the effect that it cannot necessarily be guaranteed that the judges and public prosecutors' subsistence is appropriate to the development of the general economic and financial conditions. 158

dd) Comparing the remuneration with the salaries of reference groups outside the civil service when performing the necessary overall assessment does not yield other results but corroborates the presumption of evidently inappropriate remuneration made on the basis of the comparison of salaries. 159

Prior to the oral hearing, the Federal Statistical Office presented data from the 2010 structure-of-earnings survey that permits a comparison of the remuneration paid under remuneration grade R 1 in Saxony-Anhalt with the salaries paid to select groups of employees in the private sector that are similar in terms of occupation, university degree, work experience, and required skill set. This comparison makes it possible to determine the relative position of officeholders receiving R 1 remuneration within the respective distribution of earnings of the group in question. Such a comparison of R 1 remuneration paid in Saxony-Anhalt with the salaries (excluding special payments) of the group of all full-time employees of performance group 1 (managing employees) who hold a university degree shows that in the year 2010 only 14% of the reference group earned less than an officeholder in level one of remuneration grade R 1 (basic remuneration only). At the same time, in 2010 the remuneration of such officeholders was below the median remuneration of all managing employees in select occupations who had a university degree (engineers; banking experts; entrepreneurs, managing directors, heads of division, consultants, organisers; attorneys, notaries etc.; auditors, tax consultants; administrative employees who made administrative decisions or had managing status). In 2010, as much as 44% of all full-time employees in performance group 1 who held a university degree earned more than officeholders on the final level of remuneration grade R 1 (basic remuneration). The 2010 median remuneration of all of the abovementioned occupational groups was higher than the basic remuneration of officeholders on the final level of remuneration grade R 1. 160

The discrepancy becomes even more distinct when making a comparison with select legal occupations. Within the group of “attorneys, notaries etc.”, 10% earned less than judges or public prosecutors on the first level of remuneration grade R 1 in Saxony-Anhalt and only 45% earned less than the basic remuneration of officeholders on the final level of remuneration grade R 1 in Saxony-Anhalt. 161

After the oral hearing, the Federal Statistical Office presented data on the basis of the 2001 structure-of-salaries survey and the 2010 structure-of-earnings survey that illustrate the development of the relative position of remuneration scale R compared with employees in the private sector in the period 2001-2010. According to this data, the relative position of officeholders in remuneration grade R 1 (basic remuneration, level one) has deteriorated by 7% compared with the median salary of the group of full-time employees in performance group 1 who hold a university degree (in the producing industry). The discrepancy between this reference group and the basic remuneration (final level) of the remuneration paid under remuneration grade R 1 in Saxony-Anhalt increased by 13%. 162

These comparisons show that in 2010, remuneration of R 1-officeholders was most- 163

ly significantly lower than the salaries of comparable employees in the private sector and that the relative development of their income compared to the median income had noticeably decreased since 2001. This further demonstrates that the respective remuneration is evidently insufficient.

ee) The overall assessment shows that in the period of time that is at issue here the basic remuneration rates of remuneration grade R 1 in Saxony-Anhalt were not appropriate under constitutional law. There are no apparent arguments to the contrary that could actually provide a justification for the presumed evidently insufficient alimentation. 164

c) The finding that the remuneration is evidently inappropriate is not rebutted by colliding constitutional law. In particular, the Saxony-Anhalt legislature was not yet bound by the aim of budget consolidation (so-called debt brake) enshrined in Art. 109 sec. 3 GG in the Law's version of 29 July 2009 […]. Therefore, the Court need not determine whether and to what extent specific obligations for the *Laender* derive from Art. 143d sec. 1 sentence 4, sec. 2 sentences 4 and 5 GG before 1 January 2020. In any event, according to Art. 143d sec. 1 sentence 2 GG, Art. 109 GG in the above-mentioned version applies only as of the 2011 budgetary year, which is identical with the 2011 calendar year (cf. § 4 sentence 1 of the Act on the Principles of Budget Law of the Federation and the *Laender – Gesetz über die Grundsätze des Haushaltsrechts des Bundes und der Länder* of 19 August 1969 [Federal Law Gazette – BGBl I p. 1273]). Therefore, it does not apply for the time from 2008 to 2010, which is at issue here. 165

2. In 2003, R 1 remuneration in North Rhine-Westphalia met the requirements of Art. 33 sec. 5 GG in the version in force until 31 August 2006. There are no sufficient indications suggesting that remuneration is unacceptable under the Constitution and there is thus a violation of the absolute protection of the principle of alimentation (a). Other grounds suggesting that remuneration is evidently insufficient are not apparent either (b). Moreover, there is no violation of the constitutional requirements concerning remuneration cuts (c). 166

a) An overall assessment of remuneration-relevant parameters does not give rise to the presumption that the remuneration paid in the period of time that is subject of the proceedings was evidently insufficient. 167

aa) In the 15 years before 31 December 2003 – the end of the period of time that is subject of the proceedings – the development of the basic remuneration rates including special payments paid in remuneration grade R 1 in North Rhine-Westphalia was as follows (the alimentation paid to families with many children is not subject to review here [cf. on that issue BVerfGE 99, 300]): 168

[…] 169-170

This shows an increase of R 1 remuneration by 36.83% in the time from 1989 to 2003. 171

bb) Within the same period of time, in North Rhine-Westphalia tariff-agreed wages in the civil service increased by 41.6%, the money wage index increased by 37.9%, and the consumer price index increased by 36.1%. 172

cc) Therefore, the overall discrepancy between the development of standard wages, of the money wage index, and of the consumer price index on the one hand and the development of the remuneration of judges and public prosecutors on the other hand is as follows if put into relation to the development of the remuneration paid to judges and public prosecutors: In 2003, the development of the remuneration fell short of the raise of tariff-agreed wages by 3.49% and of the increase of the money wage index by 0.78%. The increase of the consumer price index fell short of the raise of the remuneration paid to judges and public prosecutors by 0.54%. Thus, concerning these three parameters, the threshold of a 5% discrepancy between the respective parameter and the development of the remuneration paid to judges and public prosecutors is not overstepped. 173

dd) Neither does an internal comparison of remuneration show a decrease of the intervals between the remuneration grades and remuneration scales that could indicate that the remuneration paid to judges and public prosecutors in remuneration grade R 1 was inappropriate. […] 174

ee) Since in 2003 the basic remuneration paid to judges and public prosecutors - being a central element of overall remuneration - was identical across the Federation on the basis of the BBesG (former version – f.v.), a cross-comparison with other *Laender* does not indicate that the remuneration paid in North Rhine-Westphalia in 2003 were evidently inappropriate either. 175

b) There are no further apparent circumstances to be considered in the required overall assessment that would result in the finding that remuneration is evidently inappropriate. […] 176

c) Furthermore, the 1% remuneration cut in the year 2003 did not violate the relative protection of the principle of alimentation. 177

It is not entirely unobjectionable under constitutional law that in the reasoning for the draft bill of the SZG-NRW the *Land* legislature did not carry out comprehensive calculations and perform comparisons with all parameters relevant in terms of remuneration that is appropriate to the office, or at least did not document such actions […]. However, since the Federation and the *Laender* shared the responsibility with respect to alimentation during the phase of partial federalisation from 2003 to 2006, the *Land* legislature was subject only to limited duties to state reasons, as it was not competent for calculating the central element of remuneration – the basic remuneration rates. Furthermore, from a substantive perspective, the only reason for the remuneration cut – which was limited in terms of its scope – was the cut in the special payment. As long as the overall alimentation paid remains appropriate to the office, this remuneration element is in principle at the disposal of the legislature deciding on budgetary 178

matters.

3. The basic remuneration in remuneration grade R 3 in Rhineland-Palatinate in the years 2012 and 2013 was also compatible with the constitutional requirements. Here, too, there are no sufficient indications that the remuneration was no longer acceptable under the Constitution (a). There are no other grounds suggesting that remuneration was evidently insufficient (b). There is also no violation of relative protection of the principle of alimentation (c). 179

a) The sole indication that alimentation is evidently inappropriate is a comparison of the adjustment of the remuneration with the development of tariff-agreed wages paid in the civil service. The requirements imposed by the other parameters that must be fulfilled in order to find a violation of the core of the principle of alimentation (comparison with the development of the money wage index and the consumer price index, requirement of fixed intervals between remuneration grades, and cross-comparison with other *Laender*) are not met. 180

aa) The development of the basic remuneration rates including special payments paid in remuneration grade R 3 in Rhineland-Palatinate from 1998 to 2012 and 1999 to 2013, which are the periods of time at issue here, was as follows (alimentation paid to families with many children is not subject of these proceedings [cf. on that issue BVerfGE 99, 300]): […] 181-184

In the time from 1997 to 2012, remuneration paid in remuneration grade R 3 increased by 19.05%, and by 18.47% in the time from 1998 to 2013. […] 185

bb) In the time from 1998 to 2012, in Rhineland-Palatinate the tariff-agreed wages in the civil service increased by 26.62%, the money wage index increased by 20.73%, and the consumer price index increased by 23.32%. In the time from 1999 to 2010, the tariff-agreed wages in the civil service increased by 28.1%, the money wage index increased by 23.2%, and the consumer price index increased by 23.9%. 186

cc) Therefore, remuneration paid in 2012 fell short of the raise of tariff-agreed wages by 6.36%, of the increase of the money wage index by 1.41% , and of the increase of the consumer price index by 3.59%. Remuneration paid in 2013 fell short of the raise of tariff-agreed wages by 8.13%, of the increase of the money wage index by 3.99%, and of the increase of the consumer price index by 4.58%. 187

dd) A comparison of the development of the interval between remuneration grade R 3 and other remuneration grades in the period 2008 to 2013 neither indicates that protection of the core of alimentation has been violated. […]. 188

ee) On cross-comparison with other *Laender*, the gross annual income in remuneration grade R 3 in 2013 […] is only slightly below the average of the other *Laender* […]. Cross-comparison performed for the remuneration paid in remuneration grade R 3 in Rhineland-Palatinate in the year 2012 yielded similar results. 189

ff) These comparisons show that with regard to the years 2012 and 2013, four of the 190

five parameters used to further define the criterion of evident deficiency are not fulfilled. Therefore, there is no reason to presume that the remuneration paid in remuneration grade R 3 was evidently inappropriate.

b) Notwithstanding the fact that a comparison of the development of tariff-agreed wages in the civil service with the development of remuneration paid in 2012 and 2013 indicates a violation of the core of the principle of alimentation and the fact that with regard to two parameters (comparison with the development of the money wage index and the consumer price index) the 5% threshold was almost overstepped in 2013, the remuneration paid in Rhineland-Palatinate at least in remuneration grade R 3 was not evidently insufficient. This finding is not affected by the fact that for a period of five years, remuneration adjustments are capped […], even though – considering the obligation of the legislature deciding on budgetary matters from Art. 33 sec. 5 GG to adapt the alimentation to the developments of the economic and financial conditions and to the general standard of living and to consider the guiding function of the results of collective wage agreements within the civil service – such a cap meets with constitutional concerns. 191

For a comparison of the R 3 remuneration with reference groups outside the civil service shows that the relative income situation of judges and public prosecutors in this remuneration grade was on an appropriate level. […] 192

c) The relative protection of the principle of alimentation is not violated either, since the remuneration paid in remuneration grade R 3 in Rhineland-Palatinate was neither actually reduced in the referral's relevant period of 2012 to 2013, nor in the period 1998 to 2012 or 1999 to 2013. 193

D.

If a provision violates the Basic Law, the Federal Constitutional Court may declare void that provision (cf. § 82 sec. 1 in conjunction with § 78 BVerfGG) or may declare the provision to be incompatible with the Basic Law (cf. § 82 sec. 1 in conjunction with § 79 sec. 1 and § 31 sec. 2 BVerfGG). Declaring void the provision would eliminate the legal basis for the remuneration paid to judges and public prosecutors. Yet such a basis is constitutionally required and necessary under the requirement of a statutory provision as enshrined in § 2 sec. 1 BBesG, which continued to apply in Saxony-Anhalt during the period at issue here. This would lead to a situation that would in fact comply even less with constitutional requirements than the previous status quo (cf. BVerfGE 119, 331 <382 and 383>; 125, 175 <255 and 256>; 130, 263 <312>). 194

In principle, a declaration by the Federal Constitutional Court finding that a provision or several provisions is/are incompatible with the Basic Law results in an obligation of the legislature to adopt provisions that are constitutional and apply with retroactive effect. In the past, the Federal Constitutional Court has repeatedly acknowledged exceptions from this general consequence of incompatibility with the Constitution in budget-related areas (cf. BVerfGE 93, 121 <148>; 105, 73 <134>; 117, 1 <70>; 130, 195

263 <312 and 313>). Particularly in case of provisions of remuneration law one must consider that the alimentation provided to civil servants essentially is a matter of covering current needs from currently available funds. Therefore, with a view to the particularities of the status of civil servants, the violation of the Constitution need not generally be corrected retroactively (cf. BVerfGE 81, 363 <383 et seq.>; 99, 300 <330 and 331>; 130, 263 <313>). Such retroactive correction is necessary, however, with regard to the plaintiff of the initial proceedings as well as with regard to potential plaintiffs whose cases have not yet been finally decided (cf. BVerfGE 99, 300 <331>; 130, 263 <313>).

E.

The decision was taken unanimously. 196

Voßkuhle Landau Huber

Hermanns Müller Kessal-Wulf

König Maidowski

Bundesverfassungsgericht, Urteil des Zweiten Senats vom 5. Mai 2015 - 2 BvL 17/09, 2 BvL 1/14, 2 BvL 6/12, 2 BvL 5/12, 2 BvL 4/12, 2 BvL 3/12, 2 BvL 18/09

Zitiervorschlag BVerfG, Urteil des Zweiten Senats vom 5. Mai 2015 - 2 BvL 17/09, 2 BvL 1/14, 2 BvL 6/12, 2 BvL 5/12, 2 BvL 4/12, 2 BvL 3/12, 2 BvL 18/09 - Rn. (1 - 196), http://www.bverfg.de/e/ls20150505_2bvl001709en.html

ECLI ECLI:DE:BVerfG:2015:ls20150505.2bvl001709