

German Foundation for International Legal Cooperation

**German Legal Provisions Relating to Religion
in the Federal Republic of Germany**

Prof. Dr. jur. Gerhard Robbers

in cooperation with ref. jur. Angelika Günzel, ref. jur. Malte Beyer and
cand. jur. Oliver Windgätter

University of Trier

Tel. ++49 (0)651 201 2542
Fax ++49 (0)651 201 3905
e-mail: robbers@uni-trier.de
<http://www.ievr.uni-trier.de/>

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Preface

This collection of legal provisions related to religion in the Federal Republic of Germany is intended to provide a picture of the valid legal norms which is as comprehensive as possible. The law on religion focuses on the sixteen Federal Länder. An exhaustive collection of these provisions would entail many repetitions of provisions that are identical or similar in their wording. For this reason, a selection has been made that is as representative as possible. This volume includes the treaties which apply between the state and the faith communities using the same guiding principle.

I would like to thank the German Foundation for International Legal Cooperation for providing us with a translation of the collection into English.

Trier, August 2002

Gerhard Robbers

Part One: Constitutions

A) Federal Level

*Basic Law for the Federal Republic of Germany*¹

of 23 May 1949 (Federal Law Gazette [BGBl.] p. 1), last amended by Act of 26 November 2001 (BGBl. Part I, p. 3219)

[Preamble]

Conscious of their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law. Germans in the Länder of Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Basic Law thus applies to the entire German people.

I. Basic Rights

Article 3 [Equality before the Law]

(...)

(3) No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

Article 4 [Freedom of Faith, Conscience and Profession]

(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

(3) No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.

Article 6 [Marriage and the Family; Children Born outside of Marriage]

(1) Marriage and the family shall enjoy the special protection of the state.

(2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.

¹ This translation is based on the official translation of the Basic Law for the Federal Republic of Germany.

(3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.

(4) Every mother shall be entitled to the protection and care of the community.

(5) Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.

Article 7 [School Education]

(1) The entire school system shall be under the supervision of the state.

(2) Parents and guardians shall have the right to decide whether children shall receive religious instruction.

(3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned.² Teachers may not be obliged against their will to give religious instruction.

(4) The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the Länder. Such approval shall be given when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured.

(5) A private elementary school shall be approved only if the educational authority finds that it serves a special pedagogical interest or if, on the application of parents or guardians, it is to be established as an denominational or interdenominational school or as a school based on a particular philosophy and no state elementary school of that type exists in the municipality.

(...)

Article 12a [Compulsory Military or Alternative Service]

(...)

(2) Any person who, on grounds of conscience, refuses to render military service involving the use of arms may be required to perform alternative service. The duration of alternative service shall not exceed that of military service. Details shall be regulated by a law, which shall not interfere with the freedom to make a decision in accordance with the dictates of conscience, and which shall also provide for the possibility of alternative service not connected with units of the Armed Forces or of the Federal Border Police.

² Cf. the special provision for the Land of Bremen in accordance with article 141 of the Basic Law.

II. The Federation and the Länder

Article 33 [Equal Citizenship – Professional Civil Service]

(...)

(3) Neither the enjoyment of civil and political rights, nor eligibility for public office, nor rights acquired in the public service shall be dependent upon religious affiliation. No one may be disadvantaged by reason of adherence or nonadherence to a particular religious denomination or philosophical creed.

Article 34 [Liability for Violation of Official Duty]³

If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body⁴ that employs him. In the event of intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity.

V. The Federal President

Article 56 [Oath of Office]

On assuming his office, the Federal President shall take the following oath before the assembled Members of the Bundestag⁵ and the Bundesrat⁶:

»I swear that I will dedicate my efforts to the well-being of the German people, promote their welfare, protect them from harm, preserve and defend the Basic Law and the laws of the Federation, perform my duties conscientiously, and do justice to all. So help me God.«

The oath may also be taken without religious affirmation.

VI. The Federal Government

Article 64 [Appointment and Dismissal of Federal Ministers]

(...)

(2) On taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in article 56 before the Bundestag.

³ Cf. on this also the corresponding liability provisions contained in the Civil Code (Bürgerliches Gesetzbuch) (Second Part, Item E No. 2).

⁴ Public bodies (corporations) in this sense are also religious communities organised as corporations under public law in accordance with article 140 of the Basic Law in conjunction with article 137 para 5 of the Weimar Constitution.

⁵ This term constitutes the German denotation for the Federal Parliament of Germany.

⁶ The Bundesrat is the Upper House of Parliament respectively the federal council of Germany.

XI. Transitional and Concluding Provisions

Article 116 [Definition of "German"; Restoration of Citizenship]

(...)

(2) Former German citizens who between January 30, 1933 and May 8, 1945 were deprived of their citizenship on political, racial, or religious grounds, and their descendants, shall on application have their citizenship restored. They shall be deemed never to have been deprived of their citizenship if they have established their domicile in Germany after May 8, 1945 and have not expressed a contrary intention.

Article 140 [Provisions Respecting Religious Societies]

The provisions of articles 136, 137, 138, 139, and 141 of the German Constitution of August 11, 1919 shall be an integral part of this Basic Law.

Article 136 (Weimar Constitution)

(1) Civil and political rights and duties shall be neither dependent upon nor restricted by the exercise of religious freedom.

(2) Enjoyment of civil and political rights and eligibility for public office shall be independent of religious affiliation.

(3) No person shall be required to disclose his religious convictions. The authorities shall have the right to inquire into a person's membership in a religious society only to the extent that rights or duties depend upon it or that a statistical survey mandated by a law so requires.

(4) No person may be compelled to perform any religious act or ceremony, to participate in religious exercises, or to take a religious form of oath.

Article 137 (Weimar Constitution)

(1) There shall be no state church.

(2) The freedom to form religious societies shall be guaranteed. The union of religious societies within the territory of the Reich⁷ shall be subject to no restrictions.

(3) Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.

(4) Religious societies shall acquire legal capacity according to the general provisions of civil law.

(5) Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious societies shall be granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. If two or more religious societies established under public law unite into a single organization, it too shall be a corporation under public law.

⁷ The German Empire, existing at that time, was called Reich in German.

(6) Religious societies that are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law.

(7) Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies.

(8) Such further regulation as may be required for the implementation of these provisions shall be a matter for Land legislation.

Article 138 (Weimar Constitution)

(1) Rights of religious societies to public subsidies on the basis of a law, contract, or special grant shall be redeemed by legislation of the Länder. The principles governing such redemption shall be established by the Reich.

(2) Property rights and other rights of religious societies or associations in their institutions, foundations, and other assets intended for purposes of worship, education, or charity shall be guaranteed.

*Article 139 (Weimar Constitution)*⁸

Sunday and holidays recognized by the state shall remain protected by law as days of rest from work and of spiritual improvement.

Article 141 (Weimar Constitution)

To the extent that a need exists for religious services and pastoral work in the army, in hospitals, in prisons, or in other public institutions, religious societies shall be permitted to provide them, but without compulsion of any kind.

Article 141 [Religious Instruction]

The first sentence of paragraph (3) of article 7 shall not apply in any Land in which Land law otherwise provided on January 1, 1949.⁹

⁸ For the Holiday Acts issued in this area, the example given in the second part of this collection at item P No. 4 is that of the Holidays Act of the Free Hanseatic City of Bremen.

⁹ Note: This article refers to the Constitution of the Free Hanseatic City of Bremen dated 21 October 1947 (Law Gazette [GBl.] p. 251), last amended by the Act of 1 February 2000 (Law Gazette p. 31):

Article 32

(1) The general public schools shall be interdenominational schools where the lessons in Biblical history shall be on a general Christian basis with no denominational commitment.

(2) Biblical history lessons shall only be given by teachers who have declared their willingness to do so. The parents and guardians shall decide as to children's attendance at these lessons.

(3) Churches, religious and ideological communities shall have the right to teach their confession or philosophy outside school hours to those children whose parents and guardians so wish.

B) Land Level

1. Constitution of the Free State of Bavaria

*of 2 December 1946 (Law and Ordinance Gazette [GVBl.] of Bavaria p. 333),
in the version of the proclamation of 15 December 1998 (GVBl. of Bavaria p. 991)*

[Preamble]

Mindful of the physical devastation into which a state and social order without God, with no conscience and without respect for the dignity of man has plunged the survivors of the Second World War, in the steadfast resolution to ensure permanently for future German generations the blessings of peace, humanity and justice, the Bavarian People bestows upon itself the following democratic Constitution, bearing in mind its history dating back more than one thousand years.

Part One: Structure and Functions of the State

Article 7 [State Citizens and Their Rights]

(1) State citizenship is held by every citizen over the age of eighteen, irrespective of birth, race, sex, religion and profession.

(...)

Part Two: Basic Rights and Obligations

Article 107 [Freedom of Faith, Conscience and Creed]

(1) Freedom of religion and conscience are guaranteed.

(2) The undisturbed practice of religion shall be protected by the State.

(3) The enjoyment of civil and political rights shall not be made conditional upon or subject to a religious creed, nor shall political obligations be prejudiced by it.

(4) Eligibility for public office shall be independent of religious creed.

(5) Nobody shall be obliged to reveal their religious persuasions. The Administrative Bodies only have the right to enquire into membership of a religious community insofar as the maintenance of legally ordered rights and obligations or a legally instituted statistical survey make this necessary.

(6) Nobody shall be compelled to perform a religious act, or to participate in a religious rite or celebration, or to utter a religious confirmation of an oath.

Article 111a [Freedom of Broadcasting]

(1) Freedom of broadcasting shall be guaranteed. Broadcasting serves information by means of truthful, comprehensive and impartial reporting as well as by the dissemination of opinions. It contributes to education and entertainment. Broadcasting shall respect the basic free democratic order, human dignity, religious and philosophic persuasions. Glorification of

violence as well as productions which grossly offend general moral feelings shall be prohibited. Freedom of opinion, objectivity, mutual respect, protection against defamation as well as a balance in the entire broadcasting output product programme shall be guaranteed.

(2) Broadcasting shall be carried out in such a way that it is publicly answerable and under the direction of legally constituted public bodies. Significant political, philosophic and social groups shall be involved to an appropriate degree in the control of broadcasting. The total proportion of representatives of State Government, Land Parliament or the Senate on controlling bodies shall not exceed one third. The philosophic or social groups shall select or appoint their own representatives themselves.

(3) Details shall be the subject of a statute.

Part Three: Social Life

Article 127 [Educational Influence of Religious Communities]

The intrinsic right of religious communities and state recognised associations which foster non-religious beliefs to exert an appropriate influence of their creed or philosophy on the education of children shall be guaranteed without infringing the right of parents to bring up their children.

Article 131 [Educational Goals]

(...)

(2) The paramount educational goals are reverence for God, respect for religious persuasion and the dignity of man, self-control, the recognition of and readiness to undertake responsibility, helpfulness, receptiveness to everything which is beautiful, good and true, as well as a sense of responsibility for the natural world and the environment.

Article 134 [Private Schools]

(1) Private schools shall be obliged to meet the demands made on state schools. They may only be established and maintained with governmental approval.

(2) Approval shall be given provided the schools meet the standards of equivalent state schools with regard to their educational goals (article 131), their facilities and the academic training of their teachers, provided the economic and legal standing of their teachers is adequately secured, and provided there are no reservations against the person of the school director.

(3) Private elementary schools shall only be permitted under certain conditions. These conditions arise in particular where those entitled to bring up the children have no State school of their creed or their philosophic persuasion available.

Article 135 [State Elementary Schools]

State elementary schools shall be open to all children of school age. In them children shall be taught and educated according to the principles of the Christian creeds. Details shall be the subject of the Act on Elementary Schools (Volksschulgesetz).

Article 136 [Religious Instruction]

(1) The religious sensibilities of all shall be observed in lessons in all schools.

- (2) Religious teaching shall be a recognised subject in all elementary schools, vocational schools, in secondary and universities. It shall be taught in accordance with the fundamental beliefs of the religious community involved.
- (3) No teacher may be compelled to give or prevented from giving religious instruction.
- (4) Teachers require the authorisation of religious communities to give religious instruction.
- (5) The necessary school premises shall be made available.

Article 137 [Attendance at Religious Instruction]

- (1) Attendance at Religious Instruction and participation in church practices and festivals shall require the consent of the those entitled to bring up the child, and from the age of 18 on, the consent of the pupil.
- (2) Instruction on generally recognised fundamentals of morality shall be provided for those pupils who do not attend Religious Instruction.

Article 138 [Universities]

- (1) With the exception of ecclesiastical universities (article 150 section 1), the establishment and administration of universities shall be left to the State. Further exceptions shall require governmental approval.
- (2) Universities shall have the right of self-administration. The students shall be involved in this insofar as their interests are concerned.

Article 142 [Freedom of Association and Self-Administration]

- (1) There shall be no state church.
- (2) The freedom to congregate for family worship, public rituals and religious communities as well as their amalgamation within Bavaria shall be free within the limits imposed by the law valid for all.
- (3) Churches and recognised religious communities as well as such associations which foster non-religious beliefs whose aims are consistent with law valid for all shall be free from state patronage. They shall regulate and administer their own affairs independently within the limits of the law valid for all. They shall confer their offices without the participation of the state or the civil community.

Article 143 [Corporations under Public Law; Church Tax]

- (1) Religious communities and associations which foster non-religious beliefs shall acquire legal capacity according to the general provisions of the general law.
- (2) Churches and recognised religious communities shall remain corporations under public law if they have enjoyed that status hitherto. Other recognised religious communities and associations which foster non-religious beliefs whose aims are consistent with law valid for all shall be granted the same rights after a period in existence of five years and upon application.
- (3) Churches and religious communities, as well as associations which foster non-religious beliefs and are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists.

Article 144 [State Protection of Religion and the Clerics]

- (1) Clerics shall enjoy the protection of the state in the performance of their official duties.
- (2) Every public defamation of religion, its institutions, the priesthood or members of religious orders in their capacity as followers of a religion shall be prohibited and punishable.
- (3) Clerics may not be compelled to reveal before a court or to an Administrative Body information which has been vouchsafed to them in their capacity as providers of cure of souls.¹⁰

Article 145 [State Subsidies to Religious Communities]

- (1) Previous subsidies to religious communities by the state or political communities based on law or contract or special legal ties shall sustain.
- (2) New voluntary subsidies by the state, political municipalities or associations of municipalities to a religious community shall be effected by surcharges on state taxes and contributions to the members of the religious community.

Article 146 [Protection of Property and Other Rights]

The right to own property and other rights of religious communities, religious associations, monastic orders, congregations and associations which foster non-religious beliefs shall be guaranteed with regard to their institutions, foundations and other property for purposes of worship, education or charity.

Article 147 [Protection of Sundays and Holidays]

Sundays and holidays recognised by the state shall remain legally protected as days of spiritual edification and rest from work.

Article 148 [Religious Services and Cure of Souls in Hospitals, Prisons, etc.]

To the extent that there exists a need for religious services and cure of souls in hospitals, prisons and other public institutions, the religious communities shall be permitted, but may in no way be compelled, to perform religious acts.

Article 149 [Cemeteries; Joint Use of Churches and Cemeteries]

- (1) The municipalities shall ensure that every deceased person is buried in a fitting manner. The religious communities shall determine their own involvement themselves.
- (2) In cemeteries which are intended for particular religious communities, the burial of followers of other faiths or denominations in a way acceptable to them shall be permitted without segregation and provided no other suitable burial place is available.
- (3) In other respect, the joint use of churches and cemeteries according to hitherto valid law shall continue, insofar as no changes are effected by law.

¹⁰ Cf. on this the corresponding provisions in the Code of Criminal Procedure (Strafprozessordnung), Part Two, item P No. 8 (g)

Article 150 [Theological Universities and Faculties]

- (1) The churches shall be entitled to provide education and further education for their clerics in their own ecclesiastical universities.
- (2) The theological faculties in universities shall remain.

Conclusion and Transitional Provisions

Article 182 [Continued Validity of State Treaties]

Previously concluded treaties, in particular the treaty with the Christian churches of 24 January, 1924 shall remain in force.

2. Constitution of the Land of Brandenburg

of 20 August 1992 (Law and Ordinance Gazette [GVBl.] of Brandenburg Part I p. 298), last amended by Act of 7 April 1999 (GVBl. Bbg. I p. 98)

First Main Part: Basic Provisions

Article 2 [Principles of the Constitution]

- (1) Brandenburg is a free, democratic Land based on the rule of law, social welfare, peace and justice, the protection of the natural environment and culture, which strives towards cooperation with other peoples, and with its Polish neighbour in particular.
- (...)

Second Main Part: Basic Rights and State Aims

Article 12 [Equality]

- (...)
- (2) No one may be placed at an advantage or disadvantage because of his/her race, origin, nationality, language, gender, sexual identity, social origin or position, disability, religious, ideological or political conviction.

Article 13 [Freedom of Conscience, Faith and Confession]

- (1) Freedom of conscience, of faith, and the freedom of religious and ideological confession shall be inviolable; their undisturbed exercise shall be guaranteed.
- (2) No one shall be obliged to disclose his/her religious or ideological conviction. The authorities shall only have the right to enquire as to affiliation to a religious community where rights and duties depend thereon.
- (3) No one may be forced to participate in a religious or ideological act or to use a religious form of oath.

(4) If a citizen is unable to carry out civic duties because they conflict with his/her conscience, the Land should provide him/her with the opportunity where possible to render other duties imposing a similar strain. This shall not apply to taxes and public dues.

Article 14 [Sundays and Holidays]

(1) Sundays and holidays recognised by the state shall be protected by the Land as days of rest from work.

(2) The traditions linked with Sundays and holidays shall be respected.

(3) Details shall be regulated by a law.

Article 21 [Right to Political Participation]

(...)

(2) Each person shall have the same right to access to public offices in line with their suitability, qualification and specialist performance unless otherwise stipulated for the exercise of sovereign powers. Dismissal or disciplining because of activities in civil initiatives, associations, religious communities or parties shall be inadmissible .

Article 28 [Principles of Upbringing and Education]

Upbringing and education shall have the task of promoting personal development, independent thought and action, respect for the dignity, faith and convictions of others, recognition of democracy and freedom, the desire for social justice, peaceableness and solidarity in living together between the cultures and peoples, and responsibility for nature and the environment.

Article 30 [School System]

(...)

(6) The right to establish independent schools shall be guaranteed in accordance with article 7 para 4 of the Basic Law (Grundgesetz). The organisations shall have the right to a subsidy from public funds.

Article 32 [Universities]

(...)

(2) The right to establish independent universities shall be guaranteed.

(...)

(4) In order to train their clerics, the churches shall have the right to establish and maintain their own institutions similar in nature to universities. The same shall apply to religious communities. The allocation of the chairs at the state theological faculties shall be effected in agreement with the churches.

Article 36 [Legal Status]

(1) There shall be no state church.

(2) Churches and religious communities shall regulate and administer their affairs independently within the limits of the law that is valid for all. They shall confer their offices without the participation of the state or the civil community.

(3) The Land recognises the public assignment of the churches and religious communities. They shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious communities shall be granted the same rights upon application if their constitution and the number of their members give assurance of their permanency and if they do not contradict the principles and basic rights of this Constitution named in article 2 para 1.

(4) Churches and religious communities that are corporations under public law shall be entitled to levy taxes from their members on the basis of the civil taxation lists.

(5) Associations whose purpose is to foster a ideological creed shall have the same status as religious communities.

Article 37 [Property and State Payments]

(1) The right to own property and other rights of churches, religious communities and their facilities shall be guaranteed with regard to their property for purposes of worship, education or charity.

(2) Benefits by the Land and the bearers of municipal self-administration to which the churches and religious communities are entitled in accordance with the law, a contract or other legal titles may only be dissolved by agreement. Where such agreements relate to the Land, they must be confirmed by a Land law.

Article 38 [Cure of Souls]

In homes, hospitals, prisons and similar public facilities, as well as the police, religious services, cure of souls and other religious acts by the churches and religious communities shall be facilitated in line with actual need. article 13 para 3 shall apply.

Third Main Part: The State Organisation

Article 88 [Oath]

On assuming office the Prime Minister and the Ministers of the Land Government shall take the following oath before the Land Parliament:

»I swear that I will dedicate my whole efforts to the well-being of the people of the Land of Brandenburg, promote their welfare, protect them from harm, exercise the office transferred to me according to the best of my knowledge and ability and without bias, that I will preserve and defend the Constitution and the statutes, perform my duties conscientiously, and do justice to all.«

The oath may also be taken with a religious affirmation.

Part Two: Individual Fields of Law

A) Criminal Law Protection of Religious Freedom

1. Criminal Code (*Strafgesetzbuch - StGB*)

of 15 May 1871 (*Reich Law Gazette [RGBl.] p. 127*), in the version of 13 November 1998 (*Federal Law Gazette [BGBl.] Part I p. 3322*), last amended by Act of 20 December 2001 (*BGBl. Part I p. 3983*)

Section 130 Agitation of the People

(...)

(2) Whoever

1. with respect to writings (section 11 subsection (3)¹¹), which incite hatred against segments of the population or a national, racial or religious group, or one characterised by its folk customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group:
 - a) disseminates them;
 - b) publicly displays, posts, presents, or otherwise makes them accessible,
 - c) offers, gives or makes accessible to a person under eighteen years; or
 - d) produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of (a) to (c) or to facilitate such use by another; or
 2. disseminates a presentation of the content indicated in subsection (1) by radio,
- shall be punished with imprisonment of not more than three years or a fine.

Section 132a Misuse of Titles, Professional Designations and Insignia

(1) Whoever, without authorisation

1. uses domestic or foreign designations of office or government service, academic degrees, titles or public honours,

¹¹ This provision reads as follows:

Section 11 Definitions of Persons and Items

(...)

(3) Audio and visual recording media, data storage media, illustrations and other images shall be the equivalent of writings in those provisions which refer to this subsection.

2. uses the professional designation of physician, dentist, psychological psychotherapist, child or youth psychotherapist, psychotherapist, veterinarian, pharmacist, lawyer, patent attorney, certified public accountant, sworn auditor, tax consultant or tax agent,
3. uses the designation of publicly appointed expert; or
4. wears domestic or foreign uniforms, official dress or official insignia,

shall be punished with imprisonment of not more than one year or a fine.

(2) Equivalent to the designations, academic degrees, titles, honours, uniforms, official dress or official insignia named in subsection 1 shall be those which are confusingly similar to them.

(3) Subsections (1) and (2) shall also apply to official designations, titles, honours, official dress and official insignia of churches and other religious societies under public law.

Section 133 Breach of Official Custody

(1) Whoever destroys, damages, renders useless or withdraws from official disposition documents or other moveable things which are in official custody or have been officially placed in his or another's custody, shall be punished with imprisonment of not more than two years or a fine.

(2) The same shall apply to documents or other moveable things which are in the official custody of a church or another religious society under public law or have been officially placed by them in the custody of the offender.

(3) Whoever commits the act in relation to a thing which has been entrusted to or made accessible to him as an office-holder or a person specially engaged for the public service, shall be punished with imprisonment of not more than five years or a fine.

Section 139 Exemption from Punishment for Failure to Report Planned Criminal Offences

(...)

(2) A cleric shall not be obliged to report what has been confided to him in his capacity as a spiritual adviser.

(...)

Section 166 Insulting of Confessions, Religious Societies and Ideological Communities

(1) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults the content of others' religious faith or faith related to a philosophy in a manner that is capable of disturbing the public peace, shall be punished with imprisonment of not more than three years or a fine.

(2) Whoever publicly or through dissemination of writings (section 11 subsection (3)) insults a church, other religious society, or ideological community located in Germany, or their institutions or customs in a manner that is capable of disturbing the public peace, shall be similarly punished.

Section 167 Disturbing the Practice of Religion

(1) Whoever

1. intentionally and in a gross manner disturbs a religious service or a religious ceremony of a church or other religious society located in Germany; or
2. commits insulting mischief at a place dedicated to the religious services of such a religious society,

shall be punished with imprisonment of not more than three years or a fine.

(2) Corresponding celebrations of a ideological community located in Germany shall be the equivalent of religious services.

Section 167a Disturbing a Funeral Service

Whoever intentionally or knowingly disturbs a funeral service shall be punished with imprisonment of not more than three years or a fine.

Section 168 Disturbing the Peace of the Dead

(1) Whoever, without authorisation, takes away the body or parts of the body of a deceased person, a dead foetus or parts thereof or the ashes of a deceased person from the custody of the person entitled thereto, or whoever commits insulting mischief thereon, shall be punished with imprisonment of not more than three years or a fine.

(2) Whoever destroys or damages a place for laying-in-state, burial site or public place for remembering the dead, or whoever commits insulting mischief there, shall be similarly punished.

(3) An attempt shall be punishable.

Section 194 Application for Criminal Prosecution

(...)

(3) If the insult has been committed against an office-holder, a person specially engaged for the public service, or a soldier of the Federal Armed Forces while discharging his duties or in relation to his duties, it will also be prosecuted upon application by his service superior. If the act is directed against an authority or other agency which performs duties of public administration, it will be prosecuted upon application by the head of the authority or the head of the supervisory authority. The same shall apply to office-holders and authorities of churches and other religious communities under public law.

(...)

Section 220 a Genocide

(1) Whoever, with the intent of destroying as such, in whole or in part, a national, racial or religious group or one characterised by its folk customs by:

1. killing members of the group,

2. inflicting serious physical or emotional harm, especially of the type indicated in section 226¹² on members of the group,
 3. placing the group in living conditions capable of leading, in whole or in part, to their physical destruction,
 4. imposing measures which are intended to prevent births within the group,
 5. forcibly transferring children of the group into another group,
- shall be punished with life imprisonment.

(2) In less serious cases under subsection (1), Nos. 2 to 5, the punishment shall be imprisonment of not less than five years.

Section 230 Application for Criminal Prosecution

(1) Intentional bodily harm in accordance with section 223 and negligent bodily harm in accordance with section 229 shall only be prosecuted upon application, unless the public prosecution authority considers that it is required to enter the case ex officio because of the special public interest in criminal prosecution. (...)

(2) If the offence has been committed against an office-holder, a person specially engaged for the public service, or a soldier of the Federal Armed Forces during the discharge of his duties or in relation to his duties, then it may also be prosecuted upon application by his service superior. The same shall apply to office-holders of churches and other religious societies under public law.

Section 243 Especially Serious Case of Theft

(1) In especially serious cases theft shall be punished with imprisonment from three months to ten years. An especially serious case exists as a rule, if the offender

(...)

4. steals property which is used in religious services or for religious veneration from a church or other building or premises used for the practice of religion,

(...)

(2) In cases falling under subsection (1) second sentence, Nos. 1 to 6, an especially serious case shall be excluded if the offence relates to property of slight value.

Section 304 Damaging Property Which is Harmful to the Public

(1) Whoever unlawfully damages or destroys objects of veneration of a religious society existing in the state or property dedicated to religious service, or tombstones, public monuments, natural monuments, objects of art, science or craft which are kept in public collections or publicly exhibited, or objects which serve a public benefit or beautify public ways, squares or parks, shall be punished with imprisonment of not more than three years or a fine.

(2) An attempt shall be punishable.

¹² Note: Section 226 refers to grievous bodily harm in the technical sense characterised by injury to organs that are particularly important for life respectively consequences severely restricting lifestyle.

Section 306a Serious Arson

(1) Whoever sets fire to, or, as a result of setting a fire, or destroys, in whole or in part:

(...)

2. a church or another building which serves for the practice of religion

(...)

shall be punished with imprisonment of not less than one year.

(2) Whoever sets fire to a thing indicated in section 306 subsection (1), Nos. 1 to 6, or destroys it in whole or in part as a result of setting a fire, and thereby places another human being in danger of damage to health shall be similarly punished.

(3) In less serious cases under subsections (1) and (2), the punishment shall be imprisonment from six months to five years.

Section 355 Violation of Tax Secrecy

(1) Whoever, without authorisation, discloses or uses:

1. circumstances of another which became known to him as an office-holder:

a) in administrative proceedings or judicial proceedings relating to tax matters;

b) in criminal proceedings related to a fiscal offence or in proceedings to impose an administrative fine because of a fiscal administrative offence;

c) on another occasion through a communication of a revenue authority, or through the statutorily prescribed submission of a tax-assessment notice or a certificate concerning the findings made at the time of taxation; or

2. the business or trade secret of another that became known to him as an office-holder in one of the proceedings named in No. 1,

shall be punished with imprisonment of not more than two years or a fine.

(2) The following shall be the equivalent of an office-holder within the meaning of subsection (1):

(...)

3. office-holders in churches and other religious societies under public law.

(3) The offence shall only be prosecuted upon application by the service superior or the injured party. In the case of offences committed by officially consulted experts, the head of the authority whose proceedings have been affected shall be entitled to file an application collateral to the injured party.

2. Administrative Offences Act (Gesetz über Ordnungswidrigkeiten - OWiG)
*of 24 May 1968 (Federal Law Gazette [BGBl.] Part I p. 481) in the version of the
proclamation of 19 February 1987 (BGBl. Part I p. 602), last amended by Act
of 13 December 2001 (BGBl. Part I p. 3574)*

Section 126 Misuse of Official Dress or Symbols

(1) An administrative offence shall be deemed to have been committed by anyone who unauthorisedly

1. wears official costumes or insignia for an activity in healthcare or welfare that is recognised or approved by the state on domestic territory, or
2. wears official costumes or insignia of a religious association recognised by a church or another religious society under public law.

(2) Equivalent to the costumes and insignia named in subsection (1) shall be those which are confusingly similar to them.

(3) The administrative offence may be sanctioned with an administrative fine.

B) Upbringing and Education

1. Act on Religious Instruction for Children (Gesetz über die religiöse Kindererziehung) *of 15 July 1921 (Reich Law Gazette [RGBl.] p. 939), last amended by Act* *of 12 September 1990 (Federal Law Gazette [BGB1.] Part I p. 2002)*

Section 1

The free agreement between the parents shall determine the religious instruction of a child where they have the right and the duty to personally care for the child. Such agreement shall be revocable at any time, and shall be dissolved by the death of a spouse.

Section 2

(1) If there is no such agreement, or if such agreement has ceased to exist, the provisions of the Civil Code (Bürgerliches Gesetzbuch) on the right and the duty to personally care for the child shall also apply to religious instruction.

(...)

Section 5

On reaching the age of fourteen, the child shall be entitled to decide to which religious confession he/she wishes to belong.¹³ If the child has reached the age of twelve, he/she may not be instructed in another confession than was previously the case against his/her will.

Section 6

The above provisions shall apply mutatis mutandis to the instruction of children in a non-confessional philosophy.

¹³ Note: Special provisions can be found in article 137 of the Constitution of the Free State of Bavaria and article 29 of the Constitution of the Saarland which require the age of eighteen to have been reached in such cases.

2. First Act on the Organisation of the School System¹⁴ in the Land of North-Rhine Westphalia - School Organisation Act¹⁵ (Erstes Gesetz zur Ordnung des Schulwesens im Lande Nordrhein-Westfalen - Schulordnungsgesetz)

of 8 April 1952 (Law Collection of North-Rhine Westphalia [GS NRW] p. 430), last amended by Act of 9 May 2000 (GV NRW p. 562)

Section 1 [General Principles]

(...)

(2) Awakening reverence for God, respect for the dignity of man and a willingness to act towards social objectives shall be the highest goals of education. Youth is to be educated in the spirit of humanity, democracy and freedom to show tolerance of and respect for the convictions of others, to take responsibility for the maintenance of the natural environment, in love of the people and their home, the international community and peaceful convictions (Art. 7 of the Land Constitution).

(...)

(6) Openness and tolerance towards the various religious and ideological convictions and values shall be observed in instruction and education, and everything shall be avoided which might offend the feelings of those who hold different views.

(7) Only those are truly educators who exercise their office in this spirit.

Section 17 [Primary Schools]

(1) Primary schools shall be interdenominational schools, denominational schools or schools based on a particular ideology.

¹⁴ Note on school law also article 7 of the Bavarian Act on the Upbringing and Education System (Gesetz über das Erziehungs- und Unterrichtswesen - BayEUG) of 10.9.1982, in the version of the proclamation of 7.7.1994 (Law and Ordinance Gazette [GVBl.] of Bavaria p. 689, corr. p. 1024, GVB1. of Bavaria 1995 pp. 98 and 148) last amended on 24.7.1998 (GVBl. of Bavaria p. 442):

Article 7 Primary and Secondary Schools

(...)

(2) In secondary schools, pupils shall be instructed and educated in accordance with the joint principles of the Christian confessions. In classes with pupils of the same confession, furthermore, the particular principles of this confession shall be taken into account.

(3) In light of the spiritual and cultural character of Bavaria, a cross shall be affixed in each classroom. This shall give expression to the desire to meet the highest educational goals of the Constitution on the basis of Christian and Western values, whilst respecting freedom of belief. If objections are filed by those entitled to bring up the children to the affixing of a cross for serious, understandable reasons of belief or philosophy, the principal shall attempt to reach an amicable agreement. If such an agreement is not possible, he/she shall reach an arrangement in individual cases after informing the board of education which respects the freedom of faith of the objector and fairly balances the religious and philosophical convictions of all concerned in the class; here, the will of the majority shall be taken into account to the greatest possible degree.

(...)

¹⁵ Note: In accordance with sections 2, 5 and 1 of the Act on Participation in the School System (of North Rhine-Westphalia) (Gesetz über die Mitwirkung im Schulwesen) of 13.12.1977 (GV NW p. 448), last amended on 19.6.1994 (GV NW p. 343), the churches and other religious communities participate in education and instruction work in schools.

(...)

(3) Primary schools shall be converted to interdenominational schools, denominational schools or schools based on a particular ideology if those entitled to bring up the children representing two-thirds of the pupils attending the school in question so request.

Section 18 [Secondary Schools]

(...)

(3) On application of those who are entitled to bring up the children, secondary schools are to be established as denominational schools or schools based on a particular ideology if a well-ordered school operation is guaranteed therein within the meaning of section 16 a, and an interdenominational school can be reached for the other children by acceptable means.

Section 19 [Interdenominational Schools]

In interdenominational schools, children shall be taught and brought up together on the basis of Christian educational and cultural values in openness for the Christian confessions and for other religious and ideological convictions. Religious instruction shall be given separately by confession.

Section 20 [Denominational Schools]

In denominational schools, children of the Catholic or of Protestant faith or of another religious community shall be taught and brought up together in accordance with the principles of the confession in question. Communities with a confession similar to Protestant shall also be regarded as such within the meaning of this provision.

Section 21 [Schools Based on a Particular Ideology]

(1) In schools based on a particular ideology, children shall be brought up and taught in accordance with the principles of the ideology in question.

(2) At schools based on a particular ideology, religious instruction within the meaning of Art. 14 of the Land Constitution shall not be given. If special ideological instruction is established at these schools, the approval of the school supervisory body shall be required therefor.

(3) Religious instruction and ideological instruction shall not be given at non-denominational schools; they shall carry out their task of instruction and education on a general moral basis.

Section 22 [Confession of the Teachers]

(1) In schools of all types, allowance shall be made for the confessional affiliation of the pupils in appointing teachers.

(2) Teachers at denominational schools must belong to the confession in question and be willing to teach and instruct at these schools.

(3) If more than twelve pupils of a confessional minority attend a denominational school, a teacher of the minority confession shall be appointed to give religious instruction and to teach other subjects. More teachers of the confession of the minority shall be appointed, taking account of the number of pupils of the minority and of the total number of pupils at the school.

(4) The religious conviction of the minority shall be respected in lessons within the meaning of section 1 subsection (5)¹⁶.

Section 31 [Religious Instruction]

(1) Religious instruction shall be separated according to confession, in agreement with the teachings and principles of the church or religious community in question.

(2) It shall be a regular portion of the curriculum at all general schools and at all schools where attendance satisfies the obligation to attend school. Exceptions shall be schools based on a particular philosophy and non-denominational schools.

(3) In schools providing specialist training, religious instruction shall be a regular portion of the curriculum if it is a part of vocational training at these schools. Furthermore, it shall be established at the request of at least twelve pupils of a confession.

Section 32 [Teachers of Religion]

(1) Religious instruction shall be given by teachers or clerics.

(2) Teachers shall undertake religious instruction by their own free will. The preconditions for giving religious instruction shall be the state teaching qualification and an empowerment by the church or religious community.

(3) No teacher may be forced to give religious instruction. Teachers refusing to give religious instruction may not incur disadvantages under the law on civil servants as a result thereof.

(4) Clerics who give religious instruction (e.g. pastors, auxiliary clerics, locum tenens) shall require the state instruction mandate. Details shall be subject to the agreement between the church and the education board.

(5) If it cannot be ensured that religious instruction can be given by teachers or clerics, religious instruction may also be given by church-trained catechists. Guidelines relating to the proof of sufficient training, suitability and qualification as a teacher shall be agreed between the church and the education board.

Section 33 [State and Ecclesiastical School Supervision]

(1) Religious instruction shall be subject to state school supervision as a regular portion of the curriculum. In particular, it shall cover the organisation and implementation of instruction.

(2) Curricula and course books for religious instruction shall be determined in agreement with the church or religious community.

(3) The number of hours of religious instruction per week shall be determined by the education board in agreement with the church or religious community.

(4) Inspection of religious instruction by the church or religious community shall be performed in accordance with a procedure to be agreed with the education board by agents experienced in religious education. The right of the highest church administration (bishop, chairman) to visit religious instruction shall remain unaffected thereby.

¹⁶ Note: Because of a legal amendment, the referenced section 1 subsection (5) is now section 1 subsection (6).

Section 34 [Release from Religious Instruction]

The declaration of intent of those entitled to bring up the children or of the pupil with religious maturity to be exempt from religious instruction shall be communicated to the principal in writing.

Section 35 [Religious Instruction for Minority Confessions]

(1) If in a public school the number of pupils of a religious minority is at least twelve, religious instruction shall be established for them. The school supervision authority shall ensure proper religious instruction; if instruction cannot be given by other means, a teacher of the minority confession shall be appointed who can also be entrusted with other teaching where necessary.

(2) If the religious minority accounts for fewer than twelve pupils, and if religious instruction is established for these, the parishes shall provide premises for instruction, as well as lighting and heating.

3. Framework Act on Universities (Hochschulrahmengesetz - HRG)

of 26 January 1976 (Federal Law Gazette [BGBl.] Part I p. 185), in the version of the proclamation of 19 January 1999 (BGBl. Part I p. 18), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)

Chapter I: Tasks of the Universities

Section 15 Examinations and Performance Point System

(1) As a rule, studies shall be concluded by a university examination, a state or a ecclesiastical examination. (...)

(...)

Section 18 University Degrees

(1) On the basis of the university examination leading to the acquisition of a vocational qualification, the university shall confer a diploma degree stating the subject. (...) The university may also confer a diploma degree on the basis of a state examination or of a ecclesiastical examination with which university studies are concluded. (...)

(...)

Chapter V: State Recognition

Section 70 Recognition of Facilities

(1) Facilities of the educational system which in accordance with Land law are not state universities may become a state-recognised university as determined in greater detail by Land law if it is guaranteed that

1. studies are orientated in line with the goal stated at section 7,
2. a majority of parallel or consecutive courses of study at the facility only or in conjunction with other facilities of the educational system is available or scheduled in the framework

of an expansion; this shall not apply if within a subject the establishment of a multiplicity of courses of study is not demonstrated by academic development or the appropriate area of vocational activity,

3. candidates for studies meet the preconditions for acceptance in a suitable state university,
4. the full-time teachers meet the preconditions for appointment applied to similar work at state universities, and
5. the staff at the facility participate in forming the studies in analogous application of the principles applying to state universities.

(2) For church facilities, subject to more detailed provisions of Land law, exceptions may be permitted from individual preconditions named in subsection (1) if it is ensured that the studies are of equal value to studies at a state university.

(3) A state-recognised university may set university examinations and confer university degrees subject to more detailed provisions of Land law. Studies concluded at a state-recognised university shall be deemed to be concluded university studies within the meaning of this act.

(4) Members of state-recognised universities may be involved in tasks of coordination of the organisation of studies and examinations (section 9). A state-recognised university shall on application be included in the central awarding of study places (section 31).

(5) Sections 57a to 57c, 57e and 57f shall apply *mutatis mutandis* to state-recognised universities.

Chapter VII: Amendment of Federal Statutes, Final Provisions

Section 81 Treaties with the Churches

The treaties with the churches shall remain unaffected by this act.

4. Hessian University Act (*Hessisches Hochschulgesetz*)

of 3 November 1998 (Law and Ordinance Gazette [GVBl.] of Hessen Part I p. 431, corr. p. 559), last amended by Act of 31 July 2000 (GVBl. Hessen Part I p. 374)

Second Part: Studies, Teaching and Examinations

Section 17 Reform of the Study System

(1) The universities and their members shall have the ongoing task of examining and reforming the content and forms of studies as to trends in the academic sphere and art and the changes in society and at work. (...)

(2) The study reform in courses of study that are concluded with state or ecclesiastical examinations shall be effected in coaction with the agency responsible for the examinations.

Section 20 Courses of Study

(1) Courses of study shall lead to a vocational qualification, and shall be concluded by a university examination, a state or a ecclesiastical examination. (...)

(...)

Section 28 University Degrees

(1) On the basis of the university examination with which a vocational qualification is acquired, the university shall confer the diploma degree stating the subject. In accordance with a special order, it may also confer the diploma degree on the basis of a state or ecclesiastical examination by means of which university studies are concluded. (...)

(...)

Tenth Part: Non-state Higher Education Institutions

Section 102 Recognition

(1) The ministry may confer a facility of the educational system the characteristic of a state-recognised university if it permanently ensures that it meets the demands made of similar universities of the Land and meets their educational goals at the end of each section of the studies.

(2) On being state-recognised, the university shall be afforded the right to set university examinations in accordance with the provisions applying to the corresponding subjects of the universities of the Land, under the chairmanship of an examination administration appointed by the ministry; the latter shall determine according to which examination rules the procedure is to be. The universities may also issue their own examination rules, which must be of equal value to the examination rules of the Land, and which must be approved by the ministry; section 28 shall apply mutatis mutandis.

(3) Recognition shall be revoked if the preconditions for its conferment no longer apply or facts become subsequently known which would have led to a refusal of recognition.

Section 105 State Financial Aid

The Land may grant subsidies to bearers of state-recognised non-state universities to the costs of emolument of their teaching staff if

1. a special interest of the Land is ascertained in promotion,
2. the recognised course of study is in line with development planning for the universities of the Land,
3. the preconditions for non-profit operation under fiscal law are met, and
4. grants are provided for some of the particularly-talented students.

The amount of the financial assistance and of the performance to be provided by the university shall be determined in an agreement. An agreement going beyond the current budget year shall require the consent of the Land Parliament.

Section 107 Administrative Offences

(1) An administrative offence shall be deemed to have been committed by anyone who, either intentionally or through negligence

1. establishes or operates a non-state university facility seated in Hessen without approval, in doing so designates it without approval as a university, technical college, art academy,

overall university or university alone or in combination with other words, or operates a university without recognition as a state-recognised university,

2. in contravention of section 103 subsection (1) first sentence, without approval employs persons teaching at a non-state university,
3. breaches an executable instruction or order issued on the basis of this act.

(2) Administrative offences in accordance with subsection (1) Nos. 1 and 3 may be sanctioned with an administrative fine of up to twenty five thousand Euro, administrative offences in accordance with subsection (1) No. 2 with an administrative fine of up to five thousand Euro.

Eleventh Part: Final Provisions

Section 110 Treaties with the Churches and Legal Position of the Ecclesiastical Theological Universities

The treaties with the churches and the legal position of the ecclesiastical theological universities shall remain unaffected.¹⁷ Sections 102, 104, 105 and 107¹⁸ shall apply mutatis mutandis to recognition as state-recognised universities.

¹⁷ Note: This provision refers to the Treaty between the Land of Hessen and the Protestant Land Churches in Hessen of 10.2.1960 (GVBl. Hessen p. 54), in which in particular articles 10, 13 and 14, and to the Treaty between the Land of Hessen and the Catholic Bishops of Hessen of 4.7.1963 (GVBl. Hessen Part I p. 102), last amended by the supplementary treaty of 29.3.1974 (GVBl. Hessen 1 p. 521) in which in particular article 10.

¹⁸ Note: Section 107 contains a provision relating to the granting of the designation "honorary professor".

C) Law on Assembly and Association

1. Act on Assemblies and Processions - Assemblies Act (Gesetz über Versammlungen und Aufzüge - Versammlungsgesetz)

of 24 July 1953 (Federal Law Gazette [BGBl.] Part I p. 684), in the version of the proclamation of 15 November 1978 (BGBl. Part I p. 1789), last amended by Act of 11 August 1999 (BGBl. Part I pp. 1818 and 1819)

Part III: Public Assemblies in the Open Air and Processions

Section 14 [Registration]

- (1) Whoever intends to hold a public assembly in the open air or a procession shall register this with the competent authority at the latest 48 hours prior to announcement, stating the subject-matter of the assembly or procession.
- (2) The registration shall state which person is to be responsible for leading the assembly or procession.

Section 15 [Prohibition, Dissolution and Instructions]

- (1) The competent authority may prohibit the assembly or procession or make it dependent on specific instructions if in accordance with the circumstances recognisable at the time of issuing the injunction public security or order is directly endangered by implementation of the assembly or procession.
- (2) It may dissolve an assembly or procession if they are not registered, if they deviate from the information contained in the registration or the instructions are breached or if the preconditions for prohibition in accordance with subsection (1) are met.
- (3) A prohibited event shall be dissolved.

Section 16 [Pacified Precincts]

- (1) Public assemblies in the open air and processions shall be prohibited within the pacified precincts of the legislative bodies of the Federation or the Land and of the Federal Constitutional Court. It shall also be prohibited to call to public assemblies in the open air or to processions in accordance with the first sentence.
- (2) The pacified precincts for the legislative bodies of the Federation and for the Federal Constitutional Court shall be determined by Federal statute, the pacified precincts for the legislative bodies of the Länder by Land statutes.
- (3) Details shall be regulated by the statutes of the Federation and the Länder relating to pacified precincts and the Act on Pacified Precincts for Constitutional Bodies of the Federation (Gesetz über befriedete Bezirke für Verfassungsorgane des Bundes).

Section 17 [Exception for Religious Celebrations, etc., Popular Celebrations]

Sections 14 to 16 shall not apply to religious services in the open air, church processions, rogation processions and pilgrimages, customary funerals, processions of marriage parties and traditional popular celebrations.

**2. Act Regulating Public Association Law - Association Act
(Gesetz zur Regelung des öffentlichen Vereinsrechts - Vereinsgesetz)**

*of 5 August 1964 (Federal Law Gazette [BGBl.] Part I p. 593) last amended by Act
of 9 January 2002 (BGBl. Part I p. 361)*

Section 14 Associations of Foreigners

(1) Associations, the members or leaders of which are all or predominantly foreigners (associations of foreigners) can, beyond the reasons mentioned in article 9 section 2 of the Basic Law, get prohibited under the conditions of section 2. Associations, the members or leaders of which are all or predominantly foreign citizens of Member state of the European Union, are not classified as associations of foreigners. (...)

(2) Associations of foreigners can get prohibited, insofar as their purpose or their operation
(...)

4. shall support, advocate or evoke the use of force as means of implementation of political, religious or sundry concerns or
(...)

D) Media

1. Act to Regulate the Dissemination of Writings and Media Contents Harmful to Young Persons (*Gesetz über die Verbreitung jugendgefährdender Schriften und Medieninhalte, GjSM*)

of 9 June 1952 (Federal Law Gazette [BGBl.] Part I p. 377) in the version of the promulgation of 12 July 1985 (BGBl. Part I, p. 1502), last amended by ordinance of 15 December 2001 (BGBl. Part I p. 3762)

Chapter I: Writings Harmful to Young Persons

Section 1 [Entering Harmful Writings in a List]

(1) Writings which are such as may place children or juveniles in moral danger shall be entered in a list. These include in particular writings which are immoral, coarsening in effect, providing incitement to violence, crime or racial hatred, or which glorify war. The entry shall be made known.

(2) A writing may not be entered in the list

1. solely on account of a particular political, social, religious or philosophical content;

(...)

Chapter II: Federal Supervisory Body

Section 9 [Staffing of the Federal Supervisory Body]

(1) The Federal Supervisory Body shall be composed of a chairperson nominated by the Federal Ministry for Family, Senior Citizens, Women and Youth, one assessor to be nominated by each Land Government, and additional assessors to be nominated by the Federal Ministry for Family, Senior Citizens, Women and Youth. At least one deputy each shall be nominated for the chairperson and the assessors.

(2) The assessors to be nominated by the Federal Ministry for Family, Senior Citizens, Women and Youth shall be drawn from the circles of

(...)

8. the churches, the Jewish congregations¹⁹ and other religious communities constituted as corporations under public law upon the proposal of the groups named.

¹⁹ Note: The special mention of the Jewish religious communities stems from their traditional appellation as “Kultusgemeinden” (literally: cultural communities) instead of religious communities.

Section 9a [Right of Proposal Enjoyed by Specified and Unspecified Organisations]

(1) The right of proposal under section 9 subsection 2 shall be exercised within the circles listed below by the following organisations in respect of one assessor and his deputy in each case:

(...)

8. for circles of the corporations under public law referred to in section 9 subsection 2 No. 8 by

representative of the Council of the Protestant Church in Germany at the seat of government of the Federal Republic of Germany, the Commissariat of the German Bishops — Catholic Office Bonn, and of the Central Council of the Jews in Germany.

For every organisation making use of its right of proposal, one assessor and a deputy assessor shall be nominated. Where one of the organisations referred to in the first sentence submits several proposals, the Federal Minister for Family, Senior Citizens, Women and Youth shall choose an assessor.

(...)

2. Broadcasting Agreement

*[Article 1 of the Treaty on Broadcasting in the Unified Germany
(Staatsvertrag über den Rundfunk im vereinten Deutschland)]*

of 31 August 1991, in accordance with the proclamation of 10 December 1991 (Law and Ordinance Gazette [GVBl.] of Rhineland-Palatinate p. 369), last amended by the Fifth Agreement to Amend the Broadcasting Agreement dated 6 July to 7 August 2000 (GVBl. of Rhineland-Palatinate p. 518)

Part I: General Provisions

Section 2 a General Programming Principles²⁰

The Land broadcasting corporations combined in the Association of Public Broadcasting Corporations of the Federal Republic of Germany (ARD), the German Television Channel II (ZDF) and all broadcasters of nationwide television shall in their programmes respect and protect the dignity of man. They should contribute towards strengthening respect for life, freedom and physical integrity, for the faiths and opinions of others. The moral and religious convictions of the population shall be respected. Further Land law demands as to programming, as well as article 41 of this agreement, shall remain unaffected.

²⁰ Note: Comparable provisions can be found inter alia in section 5 subsection 3 of the ZDF Agreement, in section 6 subsection 2 of the Agreement on South-West German Broadcasting Corporation and in section 31 of the Land Broadcasting Act of Rhineland-Palatinate.

*Section 3 Prohibited Broadcasts, Protection of Young Persons*²¹

(1) Broadcasts shall be prohibited if they

1. breach provisions of the Criminal Code,²²

(...)

*Section 5 Short Coverage*²³

(1) Every licensed television broadcaster in Europe shall be entitled to short coverage free of charge for his own broadcasting purposes of functions and events which are open to the public and of general interest. This right shall include access, the right to make short, direct transmissions, to make recordings, the right to use the material to prepare a single report, and the right to transmit under the conditions set out in subsections 2 to 11.

(...)

(3) Subsection 1 shall not apply to churches and other religious communities or their institutions which carry out similar functions.

*Section 7 Advertising Content and Teleshopping, Identification*²⁴

(...)

(8) Advertisements of a political, ideological or religious nature shall be prohibited. The first sentence shall apply mutatis mutandis to teleshopping. Free contributions in the service of the public, including appeals for donations for charitable purposes, shall not be deemed to be advertising within the meaning of the first sentence. article 42 shall remain unaffected.

Part II: Provisions on Public Service Broadcasting

Section 14 Insertion of Advertisements

(1) Broadcasts of religious services or children's programmes shall not be interrupted by advertisements or teleshopping.²⁵

(2) (...) Television advertisements and teleshopping may be inserted during programmes subject to the conditions contained in subsections 3 and 4 provided that the integrity and character of the programmes are not prejudiced and so long as no rights of entitled persons are violated.

²¹ Note: The same provision concerns section 8 of the ZDF Agreement and section 32 of the Land Broadcasting Act of Rhineland-Palatinate. Furthermore, a similar provision is contained in section 8 of the Agreement on Media Services dated 31.01.1997 (GVBl. Rhld-Pf. p. 235), last amended on 31.8.1999 (GVBl. Rhld-Pfl. 2000 p. 105).

²² Cf. on criminal law protection of religious freedom the statutes listed in the second part of this collection at item A No. 1.

²³ Note: Provisions with identical wording can be found inter alia in section 7 of the ZDF Interstate Agreement and in section 34 of the Land Broadcasting Act of Rhineland-Palatinate.

²⁴ Note: The first and fourth sentences correspond to section 10 subsection 8 of the Deutsche Welle Act and section 44 subsection 7 of the Land Broadcasting Act of Rhineland-Palatinate.

²⁵ Note: Similar provisions are contained in section 45 subsection 1 of the Land Broadcasting Act of Rhineland-Palatinate and section 10 subsection 9 of the Deutsche Welle Act.

Section 15 Duration of Advertising

(1) The annual average for the entire duration of advertising on German Television Channel I (ARD) and on German Television Channel II (ZDF) shall in each case not exceed twenty minutes on working days. (...) Advertisements shall not be broadcast after 8.00 p.m. nor on Sundays or on legal holidays which are observed throughout the country. (...)

(...)

(4) References by broadcasting corporations to their own programmes and to documentation directly derived from these programmes, as well as free contributions in the service of the public, including appeals for donations for charitable purposes, shall not be deemed to be advertising within the meaning of subsections 1 to 3.

(...)

Part III: Provisions on Private Broadcasting

Section 41 Programming Principles

(1) Programmes which are broadcast shall be subject to the requirements of the constitutional order. Broadcasts shall respect the dignity of man as well as the moral, religious and ideological convictions of others. (...)

(...)

(3) Subsections 1 and 2 shall only apply to nationwide broadcasts.

*Section 42 On Air Time for Third Parties*²⁶

(1) The Protestant churches, the Catholic Church and the Jewish communities shall, upon request, be conceded suitable time for the transmission of religious programmes; the broadcaster may demand reimbursement of prime costs.

(...)

(3) Subsections 1 and 2 shall only apply to nationwide private broadcasts.

*Section 44 Insertion of Advertisements and Teleshopping*²⁷

(...)

(5) Television news, programmes on current political affairs, documentaries and religious programmes, when their scheduled duration is less than thirty minutes, shall not be interrupted by advertisements or teleshopping. If their scheduled duration is thirty minutes or longer, the provisions of the above subsections shall apply.

(...)

²⁶ Note: The content of the first subsection corresponds to that of section 39 subsection 1 of the Land Broadcasting Act of Rhineland-Palatinate, although the latter also affords this right to on air time to other religious communities.

²⁷ Note: The content of this statute corresponds to that of section 45 subsection 5 of the Land Broadcasting Act of Rhineland-Palatinate.

Section 49 Administrative Offences

(1) A private broadcaster who operates a nationwide system commits an administrative offence if he, intentional or by negligence,

1. transmits programmes in contravention of section 3, subsection 1 No. 1 which are prohibited because they violate section 130 of the Criminal Code, unless punishment is already imposable in respect of this act in accordance with the Criminal Code,²⁸

(...)

20. disseminates advertising or teleshopping of a political, ideological or religious nature in contravention of section 7 subsection 8,

(...)

27. (...) interrupts other programmes with advertising or teleshopping in contravention of the preconditions named in section 44 subsections 4 and 5,

(...)

3. Agreement on the ZDF (German Television Channel II)
[Article 3 of the Treaty on Broadcasting in the Unified Germany
(Staatsvertrag über den Rundfunk im vereinten Deutschland)]

of 31 August 1991 (Law and Ordinance Gazette [GVBl.] of Rhineland Palatinate p. 369), last amended by Act of 6 July to 7 August 2000 (GVBl. of Rhineland Palatinate 2000 p. 518)

Section 11 Right to On Air Time²⁹

(...)

(3) The Protestant churches, the Catholic Church and the Jewish communities shall, upon request, be granted suitable on air time for transmission of religious ceremonies and festivities, as well as other religious programmes, including such relating to questions of their public responsibility. Other religious communities under public law that are common in the whole national area may be adequately taken into account.

(4) If representatives of the political parties, the churches, the various religious and ideological directions and the representatives of the organisations of the employers and employees are afforded the opportunity to express themselves, they shall be afforded the possibility to talk and respond under the same conditions.

²⁸ Note: The same is also provided by section 61 subsection 1 No. 11 of the Land Broadcasting Act of Rhineland-Palatinate.

²⁹ Note: Section 11 subsection 3 corresponds to section 17 of the Deutsche Welle Act.

Section 12 Responsibility

(...)

(2) In accordance with sections 10 and 11 of this agreement, the party to whom the on air time has been granted shall be responsible for the content and form of the programmes.

(...)

*Section 20 Tasks of the Television Council*³⁰

(1) The Television Council shall have the task of establishing guidelines for the programmes of the ZDF and advising the managers in matters related to programming. It shall monitor adherence to the guidelines and to the principles set out in sections 5, 6, 8 to 11 and 15 of this agreement.

(...)

Section 21 Composition of the Television Council

(1) The Television Council shall be composed of seventy-seven members, namely

(...)

d) two representatives sent by the Protestant Church in Germany,

e) two representatives sent by the Catholic Church,

f) one representative sent by the Central Council of the Jews in Germany,

(...)

k) four representatives of the independent charities, one each of the Agency of Charitable Organisations of the Protestant Church in Germany, of the German Association of (Roman-Catholic) Charitable Organisations ("Caritas"), of the German Red Cross and of the main committee of the German Working Men's Welfare Association,

(...)

4. Act on the Broadcasting Corporation under Federal Law "Deutsche Welle"³¹ - Deutsche Welle Act (Gesetz über die Rundfunkanstalt des Bundesrechts »Deutsche Welle«) (Deutsche Welle Act - DWG)

*of 16 December 1997 (Federal Law Gazette [BGBl.] Part I p. 3094), last amended by Act
of 19 June 2001 (BGBl. Part I p. 1149)*

Section 5 Programming Principles

(...)

³⁰ Note: Comparable provisions are contained in section 32 of the Deutsche Welle Act, section 15 of the Agreement on the South-West German Broadcasting Corporation and section 66 of the Land Broadcasting Act of Rhineland-Palatinate.

³¹ Note: The Deutsche Welle broadcasts radio and television both in German and in foreign languages for audiences outside Germany.

(2) The programmes must facilitate free formation of opinion and may not demonstrate support for a party or other political association, a religious community, a profession or a community of interest. The moral, religious and ideological convictions of the listeners and viewers shall be respected.

(...)

Section 31 Composition

(1) The Broadcasting Council shall be composed of 17 members.

(...)

(3) The following social groups and organisations shall each nominate one member of the Broadcasting Council:

1. the Protestant Church,
2. the Catholic Church,
3. the Central Council of the Jews in Germany,

(...)

5. Act on Measures to Promote German Film (*Gesetz über Maßnahmen zur Förderung des deutschen Films - Filmförderungsgesetz - FFG*)

*of 6 August 1998 (Federal Law Gazette [BGBl.] Part I p. 2046),
last amended by Ordinance of 29 October 2001 (BGBl. Part I p. 2785)*

Chapter I: Film Promotion Institute

Section 6 Administrative Council

(1) The Administrative Council shall be composed of 29 members:

(...)

12. one member each nominated by the Protestant Church and the Catholic Church,

(...)

6. Agreement on the South-West German Broadcasting Corporation (*Staatsvertrag Südwestrundfunk*)

*of 31 May 1997, in accordance with the proclamation of 29 July 1997
(Law and Ordinance Gazette [GVBl.] of Rhineland-Palatinate p. 260),
last amended by Act of 8 March 2000 (GVBl. of Rhineland-Palatinate p. 105)*

Section 9 On Air Times for Third Parties

(...)

(3) The churches and other religious communities under public law, the representatives of the organisations of employees and employers, the governments of the Länder, and the political parties if they have the size of a parliamentary party in one of the parliaments of the Länder, shall be offered the opportunity to express their views at adequate on air times of the South-West German Broadcasting Corporation.

(4) The party to whom on air time has been granted shall be responsible for the content and form of the programmes.

Section 14 Composition of the Broadcasting Council

(...)

(2) 51 members of the Broadcasting Council shall be from the Land of Baden-Württemberg. Of these (...)

3. two members shall be sent by the Protestant Land Churches,
4. two members shall be sent by the Roman Catholic Church,
5. one member shall be sent by the Israelite Religious Communities,
6. one member shall be sent by the independent churches,(...)

(3) 23 members of the Broadcasting Council shall be from the Land of Rhineland-Palatinate. Of these (...)

3. one member shall be sent by the Catholic Dioceses in the Land of Rhineland-Palatinate
4. one member shall be sent by the Protestant churches in the Land of Rhineland-Palatinate

7. Land Broadcasting Act [of Rhineland-Palatinate] (Landesrundfunkgesetz - LRG)
*of 28 July 1992 (Law and Ordinance Gazette [GVBl.] of Rhineland-Palatinate p. 247),
in the version of 8 March 2000 (GVBl. of Rhineland-Palatinate p. 105), last amended by Act
of 30 November 2000 (GVBl. Of Rhineland-Palatinate p. 516)*

Section 6 Granting Permission [to Broadcast]

(1) Permission shall be granted on written application. It may only be granted if the following preconditions are met:

1. the applicant must be
(...)
b) a religious or ideological community under public law,
(...)
2. the applicant must have his/her registered office or domicile in the Federal Republic of Germany;
3. the applicant must guarantee that he/she will adhere as a broadcaster to the statutory provisions and the provisions of its constitution in accordance with this act;

4. the applicant must give rise to an expectation that he/she is economically and organisationally able to implement broadcasting in accordance with his/her application;
5. the applicant must implement the technical studio organisation of the programming in Rhineland-Palatinate or him/herself or through one of his/her shareholders guarantee to ensure appropriate media activities there; the Central Land Agency for Private Broadcasters may permit exceptions for broadcasters who demonstrate that they have transmission capacities on satellites not allocated to the Land of Rhineland-Palatinate;
6. the application must contain the information referred to in section 13 Nos. 1 to 6.

Section 16 Diversity of Opinion, Regional Programming

(1) In private broadcasting, content-wise diversity of opinions is to be largely expressed. The major political, ideological and social powers and groups must be afforded sufficient opportunity to express themselves in the full programmes; minority views have to be taken into account. (...)

(...)

Section 64 Assembly [of the Central Land Agency for Private Broadcasters]

(1) The assembly shall consist of 42 members. Of these

(...)

4. one member shall be sent by the Catholic Dioceses in Rhineland-Palatinate, one member by the Protestant Churches in the Land of Rhineland-Palatinate and one member by the Land Association of the Jewish Communities of Rhineland-Palatinate (...)

E) Civil Status and Civil Law

1. Civil Status Act (Personenstandsgesetz - PStG)

of 3 November 1937 (Reich Law Gazette [RGBl.] Part I p. 1146), in the version of the proclamation of 8 August 1957 (Federal Law Gazette [BGBl] Part I p. 1125), last amended by Act of 9 April 2002 (BGBl Part I p. 1239)

Part II: Marriage, Marriage Book and Family Book

Section 5 [Preconditions for Registration of Marriage]

(1) The fiancées shall when registering the conclusion of marriage submit to the registrar their descent documents, certified copies of the family book or excerpts there from.

(...)

(3) If the fiancées are unable to obtain the necessary documents or only with considerable difficulty or at an unreasonably high cost, the registrar may be satisfied with the submission of church or other certifications with evidentiary force. (...)

(...)

Section 11 [Entries in the Marriage Register]

(1) The following shall be entered in the marriage register

1. the first and last names of the parties concluding marriage, their professions and residence, their place and date of birth, as well as if they agree their legal affiliation or their non-affiliation to a church, religious society or ideological community,

(...)

Section 12 [Creation of Entry; Entries]

(...)

(2) The following shall be entered in the Family Book

1. the first and last names of the spouses, their professions, their place and date of birth and conclusion of marriage, as well as if they agree their legal affiliation or non-affiliation to a church, religious society or ideological community, (...)

(...)

Section 14 [Further Entries]

(1) The registrar keeping the Family Book shall enter therein

(...)

7. the change in the legal affiliation or non-affiliation to a church, religious society or ideological community,

(...)

Section 15 b [Basis for Entries in the Family Book]

(1) Unless otherwise stipulated by law, the entries in the Family Book, apart from the information relating to profession, legal affiliation or non-affiliation to a church, religious society or ideological community and the residence or last residence, shall be effected on the basis of entries in other civil status registers or because of public certificates. Section 5 subsection (3) shall apply mutatis mutandis.

(...)

Part III: Register of Births and Deaths

Section 21 [Entries in the Register of Births]

(1) The following shall be entered in the Register of Births

1. the first and last names of the parents, their professions and place of residence, as well as their nationalities if they are not German and their foreign nationality is proven, as well as if they agree their legal affiliation or non-affiliation to a church, religious society or ideological community,

(...)

Section 37 [Entries in the Register of Deaths]

(1) The following shall be entered in the Register of Deaths

1. the first and last names of the deceased, his/her profession and place of residence, place and date of birth as well as if the person reporting agrees their legal affiliation or non-affiliation to a church, religious society or ideological community,

(...)

Part VI: Court Procedure

Section 46 a [Correction of a Completed Entry]

(1) The registrar may correct obvious typographical errors in a completed entry. He/she may also correct the following on the basis of public certificates or of his/her own investigations

1. references to entries in other civil status registers, as well as information relating to legal affiliation or non-affiliation to a church, religious or ideological community,

(...)

(2) The registrar may make other corrections in the Register of Marriages, Births and Deaths once the entry has been completed if the correct or complete circumstances have been determined by domestic civil status certificates.

Part VIII: Evidentiary Force of the Civil Status Registers and Certificates

Section 62 [Birth and Descent Certificate]

(1) The following shall be included in the birth certificate and in the origin certificate

(...)

3. the first and last names of the child's parents, their place of residence and their legal affiliation or non-affiliation to a church, religious society or ideological community if the legal affiliation or non-affiliation has been entered in the register of births.

(...)

Section 63 [Marriage Certificate]

The following shall be included in the marriage certificate

1. the first names of the spouses and the family names kept by them prior to conclusion of marriage, their place of residence, the place and date of their birth, as well as their legal affiliation or their non-affiliation to a church, religious society or ideological community if the legal affiliation or non-affiliation has been entered in the register of marriages,

(...)

Section 64 [Death Certificate]

The following shall be included in the death certificate

1. the first and last names of the deceased, his/her place of residence, place and date of birth as well legal affiliation or non-affiliation to a church, religious society or ideological community if the legal affiliation or non-affiliation has been entered in the register of deaths,

(...)

Part IX: Final Provisions

Section 67 [Church Marriage Prior to Conclusion of Marriage]³²

Whoever administers a church marriage or the religious festivities of the conclusion of marriage without firstly the fiancées having declared at a registrar's office their intention to enter into marriage with one another shall be deemed to have committed an administrative offence unless one of the fiancées is mortally ill and a delay is not possible or a severe moral emergency applies that cannot be otherwise remedied, the existence of which is confirmed by the competent agency of the religious corporation under public law.

Section 67a [Administrative Offence in the Event of a Failure to Inform]³³

Whoever administers a church marriage or the religious festivities of the conclusion of marriage without firstly the fiancées having declared at a registrar's office their intention to

³² Note: This is an administrative offence where no sanction is applied.

³³ Note: This is an administrative offence where no sanction is applied.

enter into marriage with one another shall be deemed to have committed an administrative offence if he/she does not inform the registrar's office in writing on this without delay.

Section 69a [Change of Religion]

(1) A change in legal affiliation or non-affiliation to a church, religious society or ideological community, by persons who previously belonged to a church, religious society or ideological community cannot be entered until it has been proven that they have resigned from the church, religious society or ideological community. Equally, affiliation to a church, religious society or ideological community may only be entered after affiliation has been proven.

(2) Entries regarding a person's legal affiliation or non-affiliation to a church, religious society or ideological community in a civil status register may only be evaluated for the purposes of demographic statistics. Counting cards shall be completed by the registrars and in cases falling under sections 18, 19 and 34 by the agencies named therein, in which

1. when certifying birth, information on legal affiliation or non-affiliation to a church, religious society or ideological community of the child's parents,
2. when certifying death, information on legal affiliation or non-affiliation to a church, religious society or ideological community of the deceased,
3. when certifying conclusion of marriage, information on legal affiliation or non-affiliation to a church, religious society or ideological community of the persons marrying.

Where these data do not emerge from the entries in the civil status registries, the persons reporting or those concluding marriage shall be under an obligation to provide information. The registrar shall keep on the information contained in the counting cards lists of names to be kept as the civil status registers. Information on the legal affiliation or non-affiliation of individuals to a church, religious society or ideological community may only be given to the churches, religious societies or ideological communities to which these persons belong.

2. Civil Code (*Bürgerliches Gesetzbuch*)

of 18 August 1896 (Reich Law Gazette [RGBl.] p. 195), last amended by Act of 9 April 2002 (Federal Law Gazette [BGBl.] Part I p. 1239)

Book 1: General Part

Part 1: Persons

Section 31 Liability of the Association for Bodies

The association shall be liable for the damage caused by an act committed by the board, a member of the board or another constitutionally-appointed representative³⁴ in exercising the activities vested in him/her constituting an obligation to provide compensation.

³⁴ Note: The constitutional representative of a Church parish is the pastor.

Section 89 Liability for Organs — Insolvency

(1) The provision contained in section 31 shall apply mutatis mutandis to the fiscal authorities, as well as to corporations, foundations and institutes under public law³⁵.

(...)

Book 2: Law on Debts

Part 4: Ceding of the Receivable

Section 411 Ceding of Salary

If a military person, a civil servant, a cleric or a teacher at a public instruction institution assigns the assignable part of his/her service income, of the special waiting allowance or of the retirement pension, the paying cash office shall be informed of the ceding by handing over a certificate issued by the previous creditor that shall be publicly or officially certified. (...)

Part 8: Individual Debts

*Section 618 Duty to Take Protective Measures*³⁶

(...)

(2) If the obligee is included in the domestic community, the party entitled to performance with regard to residential and sleeping premises, board and work and leisure time shall take the measures and orders that are required with regard to the health, morals and religion of the obligee.

Section 839 Liability for Breaches of Official Duty

(1) If a civil servant intentionally or negligently breaches an official duty incumbent on him/her towards a third party, he/she shall compensate for the damage incurred by the third party as a result thereof. If the civil servant is only negligent, recourse may only be to him/her if the injured party is unable to obtain compensation in another manner.

(...)

³⁵ Note: Corporations under public law are inter alia religious communities meeting the preconditions of article 140 of the Basic Law in conjunction with article 137 para 5 of the Weimar Constitution (cf. First Part, item A).

³⁶ Note: A corresponding provision is also contained in section 62 subsection (2) of the Commercial Code (Handelsgesetzbuch) of 10.5.1897 (Reich Law Gazette [RGBl.] p. 219), last amended on 10.12.2001 (Federal Law Gazette [BGBl.] Part 1 p. 3422) relating to the duty of care of the employer towards commercial employees.

Book 4: Family Law

Part 1: Civil Marriage

Section 1309 Certificate of No Impediment to Marry for Foreigners

(1) Whoever is subject to foreign law as to the preconditions for the conclusion of marriage, subject to article 13 para 2 of the Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch) should not enter into marriage before submitting a certificate from the domestic affairs authority of his/her home country to the effect that there is no impediment to the conclusion of marriage in accordance with the law of that state. (...)

(2) The President of the Higher Regional Court in whose district the registrar is seated with whom the conclusion of marriage has been registered may issue an exemption from the requirement in accordance with subsection (1) first sentence. The exemption should only be granted to stateless individuals with habitual residence abroad and nationals of states whose authorities do not issue certificates of no impediment within the meaning of subsection 1. In special cases, it may also be granted to nationals of other states.³⁷ (...)

Section 1588 Unaffectedness of Church Duties

Church duties regarding marriage shall remain unaffected by the provisions of this section^{38, 39}

Part 2: Relatives

Section 1626 Parental Care, Principles

(1) The parents shall have the duty and the right to care for the minor child (parental care). Parental care shall encompass personal care of the child (personal custody)⁴⁰ and the assets of the child.

(2) With care and upbringing, the parents shall take account of the increasing ability and the growing need of the child for independent, responsible action. They shall discuss questions of parental care with the child where this is suitable in terms of his/her state of development, and shall attempt to reach agreement.

Part 3: Guardianship, Legal Care, Curatorship

Section 1776 Parents' Right of Nomination

(1) The person shall be nominated as a guardian who is nominated by the parents of the ward.

³⁷ Note: Accordingly, an exemption may be granted inter alia if a religiously-motivated prohibition of marriage pertains in accordance with foreign law which violates the German ordre public or article 13 para 2 of the Introductory Act to the Civil Code. The wording of the latter provision is contained in the second part at item E No. 3.

³⁸ Note: This part is concerned with civil marriage and governs, in addition to betrothal, entering into, annulment and dissolution of marriage, re-marriage in the event of a declaration of death, the general impact of marriage and the marital property regime.

³⁹ Note: The church duties of Church members are determined by intra-church laws and codes.

⁴⁰ Note: Religious instruction is also an element of personal care.

(2) If the father and mother have nominated different persons, the nomination by the parent last deceased shall apply.

Section 1779 Selection by a Guardianship Court

(1) If the guardianship is not to be assigned to a person nominated in accordance with section 1776, the Guardianship Court shall select the guardian after hearing the youth welfare office of the ward.

(2) The Guardianship Court should select a person who by their personal circumstances and assets and by the other circumstances is suitable to operate the guardianship. In selecting from among several suitable persons, the probable wish of the parents, the personal relations of the ward, the degree of relation with or affinity to the ward and the religious confession of the ward shall be taken into consideration.

(...)

Section 1784 A Civil Servant or Religious Servant as Guardian

(1) A civil servant or religious servant who in accordance with the Land statutes requires special permission to assume guardianship, should not be appointed as a guardian without the prescribed permission.⁴¹

(2) This permission may only be refused if an important service reason pertains.

Section 1801 Religious Instruction

(1) Care for the religious instruction of the ward may be removed from the individual guardian by the Guardianship Court if the guardian does not belong to the confession in which the ward is to be brought up.⁴²

(2) If the youth welfare office or an association is to decide as the guardian on accommodation of the ward, account shall be taken here of the religious confession or the ideology of the ward and his/her family.

Section 1888 Dismissal of Civil Servants or Religious Servants

If a civil servant or a religious servant has been appointed as a guardian, the Guardianship Court shall dismiss him/her if the permission required in accordance with the Land statutes to assume or to continue guardianship assumed prior to entry into the office or service relationship is refused or withdrawn, or if in accordance with the Land statutes permissible prohibition of continuation of the guardianship is effected.

⁴¹ Note: The law of the religious society in question applies to religious servants on the basis of article 140 of the Basic Law, in conjunction with article 137 of the Weimar Constitution (cf. first part item A).

⁴² Note: In case of different confessions, and if there is an important reason, custody in respect of Religious Instruction is removed from the guardian in accordance with sections 1775 and 1901 subsection 1. A change of religion or resignation from the church does not always render the guardian unsuitable.

3. *Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch)*
of 18 August 1896 (Reich Law Gazette [RGBl.] Part I p. 604), in the version of the proclamation of 21 September 1994 (Federal Law Gazette [BGBl.] Part I p. 2494, corr. BGBl. 1997 I p. 1061), last amended by Act of 11 December 2001 (BGBl. Part I p. 3513)

1. Part: General Provisions

Chapter 2: International Private Law

Article 13 Conclusion of Marriage

(1) The preconditions for the conclusion of marriage shall be subject for each fiancée to the law of the state of which he/she is a citizen.

(2) If a precondition of this is not met, German law shall apply in this respect if

1. a fiancée has his/her habitual place of residence on domestic territory or is German,
2. the fiancées have taken reasonable steps towards fulfilling the preconditions, and
3. it is incompatible with the freedom to conclude marriage to prohibit the conclusion of marriage; in particular, the previous marriage of a fiancée shall not constitute a hindrance to marriage if its existence has been remedied by a ruling issued or recognised here, or the spouse of the fiancée has been declared dead.⁴³

(3) Marriage may only be concluded in domestic territory in the form prescribed here. Marriage between fiancées neither of whom is German may however be concluded before a person properly empowered by the government of the state of which one of the fiancées is a citizen⁴⁴ in the form prescribed by the law of that state; a certified copy of the entry of the marriage thus concluded in the registry kept by the person properly empowered so to do shall provide full proof of the conclusion of marriage.

3. Part: Relationship between the Civil Code and the Land Statutes

Article 80 [Property Law Claims of Civil Servants – Law on Benefice]

(1) Unless a special provision has been taken in the Civil Code, the Land law provisions regarding property rights and obligations of civil servants, clerics and teachers at public instruction institutes deriving from the official or service relationship including the claims of the surviving dependants shall remain unaffected.

(...)

⁴³ This provision also applies under certain preconditions if the religious law on the conclusion of marriage used by the state to govern the law on marriage requires for marriage that the fiancées belong to the same religion.

⁴⁴ Note: Hence, inter alia clergy personally nominated by the embassy of the home state to the Foreign Office may also be empowered to administer marriage.

Article 132 [Obligation to Construct and Maintain Churches and Schools]

The Land law provisions regarding the obligation to construct and maintain churches and schools shall remain unaffected.⁴⁵

Article 133 [Stalls and Burial Grounds]

The Land law provisions regarding the right to use a place in a building devoted to religious services or in a public cemetery shall remain unaffected.⁴⁶

4. Authentication Act (*Beurkundungsgesetz*)

of 28 August 1969 (Federal Law Gazette [BGBl.] Part I p. 1513), last amended by Act of 13 December 2001 (BGBl. Part I p. 3574)

Section 3 Prohibition of Collaboration as a Notary

(...)

(2) If it is a matter concerning several persons, and if the notary has acted previously in this matter as a legal representative or agent, or if he/she acts as an agent for one of these persons in another matter, he/she should indicate such prior to recording and ask whether he/she should nevertheless effect the recording. He/she should note in the certificate that this has happened.

(3) Subsection (2) shall apply *mutatis mutandis* if it relates to

(...)

3. matters of a religious or philosophical society recognised as a corporation under public law or a sub-organisation of such a society recognised as a corporation under public law to whose body the notary belongs.

(...)

5. Act on Copyright and Neighbouring Rights - Copyright Act

(*Gesetz über Urheberrecht und verwandte Schutzrechte - Urheberrechtsgesetz*)

of 9 September 1965 (Federal Law Gazette [BGBl.] Part I p. 1273), last amended by Act of 1 September 2000 (BGBl. Part I pp. 1374 and 1375)

Section 46 Collections for Religious, School or Instructional Use

(1) Reproduction and distribution shall be permissible where limited parts of works, of works of language and of musical works, individual works of fine art or individual photographs are incorporated after their publication in a collection which assembles the works of a considerable

⁴⁵ Cf. on this the corresponding provisions, for instance in article 10 para 2 and article 13 of the Treaty between the Free State of Thuringia and the Protestant Churches in Thuringia (see below in third part No. 5 (a)).

⁴⁶ Note: The law on church seating and burial is part of public law today. Cf. on this as an example of a Land law provision of the cemetery and burials system the Burials Act of Mecklenburg-Western Pomerania (*Bestattungsgesetz von Mecklenburg-Vorpommern*), in the second part at item H No. 1.

number of authors and is intended, by its nature, exclusively for religious, school or instructional use. The purpose for which the collection is to be used shall be clearly stated on the title page or in some other appropriate place.

(...)

(3) Reproduction may begin only if the intention to exercise the rights afforded by subsection (1) has been communicated by registered letter to the author or, if his permanent or temporary residence is unknown, to the holder of an exclusive exploitation right, and two weeks have elapsed since dispatch of the letter. If the permanent or temporary address of the holder of the exclusive right is also unknown, the communication can be made by publication in the Federal Gazette (Bundesanzeiger).

(4) The author shall be paid equitable remuneration for the reproduction and distribution.

(...)

Section 48 Public Speeches

(1) It shall be permissible

(...)

2. to reproduce, distribute and communicate to the public speeches made at public proceedings in state, municipal or religious bodies.

(2) It shall be inadmissible, however, to reproduce and distribute the speeches referred to in subsection (1), No. 2, in the form of a collection containing predominantly speeches by the same author.

Section 49 Newspaper Articles and Broadcast Commentaries

(1) It shall be permissible to reproduce and distribute individual broadcast commentaries and individual articles from newspapers and other information journals devoted solely to issues of the day in other newspapers or journals of like kind and to communicate such commentaries and articles to the public, if they concern political, economic or religious issues of the day and do not contain a statement reserving rights.(...)

(...)

Section 52 Public Communication

(...)

(2) The public communication of a published work shall be permissible at a religious service or a celebration of the churches or religious communities. However, the organiser shall pay the author an equitable emolument.

(...)

Section 62 Prohibition of Alteration

(1) Where the use of a work is permissible under the provisions of this section, no alteration may be made to the work. Section 39 shall apply mutatis mutandis.

(2) Where the purpose of the use may demand, it shall be permissible to make translations and such alterations to the work as amount merely to extracts or to transpositions into another key or pitch.

(3) With respect to works of fine art and photographic works, conversion to a different scale and other alterations of the work shall be permissible to the extent required by the method of reproduction.

(4) In the case of collections for religious, school and instructional use (section 46), such alterations of works of language shall be permissible as are necessary for religious, school or instructional use, in addition to the alterations permitted under subsections (1) to (3). However, such alterations shall require the consent of the author (...). Consent shall be deemed to have been granted if the author or his successor in title does not object within one month after the proposed alteration was communicated to him, and if the notification of the alteration has drawn attention to this legal consequence.

**6. Act on the Representation of Copyright and Neighbouring Rights -
Copyright Representation Act (Gesetz über die Wahrnehmung von Urheberrechten und
verwandten Schutzrechten - Urheberrechtswahrnehmungsgesetz)**

*of 9 September 1965 (Federal Law Gazette [BGBl.] Part I p. 1294), last amended by Act
of 13 December 2001 (BGBl. Part I p. 3678)*

Second Part: Rights and Duties of the Collecting Society

Section 13 Tariffs

(1) The collecting society shall set tariffs regarding the emolument that it claims on the basis of the rights and claims it represents. (...)

(...)

(3) (...) The collecting society should when setting tariffs and when collecting the tariff fees take sufficient account of religious, cultural and social concerns in payment of the emolument, including the concerns of youth welfare.

F) Building and Property Law

1. Federal Building Code (*Baugesetzbuch - BauGB*)

of 23 June 1960 (Federal Law Gazette [BGBl.] Part I p. 341), in the version of the proclamation of 27 August 1997 (BGBl. Part I p. 2141, corr. 1998 I p. 137), last amended by Act of 15 December 2001 (BGBl. Part I p. 3762)

Chapter One: General Urban Planning Legislation

Part One: Urban Land-Use Planning

Section 1 The Scope, Definition and Principles of Urban Land-Use Planning

(...)

(5) Land-use plans shall safeguard sustainable urban development and a socially equitable utilisation of land for the general good of the community, and shall contribute to securing a humane environment and to protecting and developing the basic conditions for natural life. In the preparation of land-use plans, attention shall be paid in particular to the following:

(...)

6. the requirements of churches and religious societies under public law for worship and cure of souls,

(...)

Section 5 The Content of the Preparatory Land-Use Plan

(1) The preparatory land-use plan shall represent in basic form the type of land uses arising for the entire municipal territory in accordance with the intended urban development which is proposed to correspond to the anticipated needs of the municipality.(...)

(2) The preparatory land-use plan may in particular show:

(...)

2. the existence within the municipal area of facilities and infrastructure for public and private provision of goods and services, in particular buildings and amenities serving the community and institutions for public needs, and in addition schools and churches and any other buildings or amenities which serve church-related, social, healthcare and cultural purposes, and sports areas and playgrounds;

(...)

Part Two: Safeguarding Land-Use Planning

Section 19 Permission to Subdivide Plots

(1) The municipality may adopt a resolution to determine in respect of the territory covered by a binding land-use plan within the meaning of section 30 subsections (1) and (3) that permission shall be required for the subdivision of a plot to be rendered effective. (...)

(...)

(4) Subdivision shall not require permission where

(...)

4. a public agency, institution or foundation of an exclusively religious, scientific, charitable or non-profit nature, a religious society which has been granted the rights of a corporation under public law or a legally competent institution, foundation or association of persons serving the purposes of such a religious society is involved as purchaser or property owner, or (...).

Section 26 Exclusion of the Right of Pre-Emption

The right of pre-emption may not be exercised where

(...)

2. the property

(...)

- b) is being purchased by churches or religious societies under public law for the purposes of worship or cure of souls,

(...)

Part Five: Expropriation

Section 90 The Expropriation of Land for Purposes of Compensation in the Form of Land

(...)

(2) Plots shall not be subject to expropriation for purposes of compensation in the form of land where and to the extent that

(...)

2. the land or proceeds therefrom directly serves or is intended to serve public purposes or public welfare, or purposes of instruction, research, medical and healthcare, education, physical training or the work of the churches and other religious communities under public law and their institutions.

(...)

2. Act on Measures to Improve the Agricultural Structure and to Secure Agricultural and Forestry Operations - Property Dealings Act (Gesetz über Maßnahmen zur Verbesserung der Agrarstruktur und zur Sicherung land- und forstwirtschaftlicher Betriebe - Grundstücksverkehrsgesetz - GrdstVG)

of 28 July 1961 (Federal Law Gazette [BGBl.] Part I p. 1091), last amended on 8 December 1986 (BGBl. Part I p. 2191)

Section 2 [Approval]

(1) The legal commercial sale of a plot of land and the contract there regarding shall require approval. If a contract has been approved, conveyance by agreement effected in executing the contract shall be deemed to be approved. Approval may also be granted prior to certification of the legal transaction.

(2) The following shall be deemed equivalent to the sale in a plot of land

1. the granting and the sale of a co-ownership share in a plot of land;
2. the sale of an inheritance share to persons other than a co-heir if the estate largely consists of an agricultural or forestry operation;
3. the appointment of a usufructuary right regarding a plot of land.

Section 4 [Transactions Not Requiring Approval]

Approval shall not be necessary if

(...)

2. a religious society with the rights of a public-law corporation acquires a plot of land, unless it is an agricultural or forestry operation; (...)

(...)

3. Federal Benefits Act (Bundesleistungsgesetz)

of 19 October 1956 (Federal Law Gazette [BGBl.] Part I p. 815), last amended by Act of 20 December 2001 (BGBl. Part I p. 3987)

Section 1 [Purpose of the Payments]

(1) Payments may be required

1. in order to avert an immanent danger to the existence of the free, democratic basic order of the Federation or of a Land, or to avert or remedy a disturbance of public order in the border area endangering the security of the borders;
2. for purposes of defence, in particular to avert a danger by means of which the existence of the Federation is endangered either indirectly or directly from outside in the framework of its classification in a system of mutual collective security;
3. in order to meet the Federation's obligations under bilateral agreements regarding the stationing and legal position of forces from other states on Federal territory;

4. to accommodate persons or to transfer operations and public facilities which are necessary because of use of plots of land for purposes under Nos. 1 to 3.

(...)

Section 4 [Limits of Personal Obligation to Pay]

(...)

- (2) The following may not be obliged to pay

(...)

4. churches and other public-law religious communities, as well as their associations regarding the things and rights serving ecclesiastical purposes or which are indispensable to carry out their administrative activities;

(...)

Section 68 [Burden of Manoeuvres for Plots of Land]

- (1) Troops may cross, temporarily occupy or block plots of land.

- (2) Troops may not exercise the rights to which are vested in them under subsection (1) without special permission of the right-holder in respect of the following

(...)

4. places of religious, cultural or historical significance;

(...)

G) Protection of Monuments

1. Act to Protect German Cultural Assets against Removal from the Country - Cultural Assets Protection Act (Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung - Kulturgüterschutzgesetz - KultGSchG)

of 6 August 1956 (Federal Law Gazette [BGBl.] Part I p. 501), in the version of the proclamation of 8 July 1999 (BGBl. Part I p. 1754), last amended by Ordinance of 29 October 2001 (BGBl. Part I p. 2785)

Section 19 [Cultural Assets Owned by the Churches]

(1) This act shall not apply to cultural assets and archived assets owned by the churches or by another religious society recognised as a public-law corporation and their church-supervised facilities and organisations, where by internal public-law provisions the sale of valuable cultural assets and archived assets has been made dependent on the approval of a supervisory church body or because of statutory provisions has been made dependent on the approval of a state body. An expert agency must however be heard from the point of view of this act prior to a decision being taken on approval of sale.

(2) The churches and the religious communities recognised as corporations under public law may register works of art and other cultural assets which they own within the meaning of this act for inclusion in the "List of cultural assets valuable to the nation". The highest Land authority shall decide on inclusion in accordance with this act.

2. Act to Protect and Care for Cultural Monuments in the Free State of Saxony - Saxon Monument Protection Act (Gesetz zum Schutz und zur Pflege der Kulturdenkmale im Freistaat Sachsen - Sächsisches Denkmalschutzgesetz - SachsDSchG)

of 3 March 1993 (Law and Ordinance Gazette [GVBl.] of Saxony p. 229), last amended by Act of 28 June 2001 (GVBl. of Saxony p. 426)

Section 18 Cultural Monuments Serving the Practice of Religion

(1) The monument protection authorities shall as a matter of priority adhere to the concerns of religious service which are to be determined by the superior church authority or the appropriate agency of the religious community in question in respect of cultural monuments serving the practice of religion.

(2) Decisions and measures of the monument protection authorities with cultural monuments owned by the church shall be taken in agreement with the superior church authorities or the appropriate agency of the religious community in question.

(3) Sections 11 and 12⁴⁷ shall not apply to cultural monuments owned by the churches and used for religious services where the churches issue their own provisions to protect these cultural

⁴⁷ Note: Section 11 concerns those measures to be taken by a monument conservation authority. Section 12 stipulates amongst other things that a cultural monument is only to be restored or repaired, its appearance or

monuments in agreement with the highest monument protection authority. Prior to implementation of projects within the meaning of section 12 subsection (1), agreement shall be reached with the competent superior Land authority. If no agreement can be reached either with it or with the higher monument protection authority, the highest monument protection authority shall decide, in agreement with the highest church authority.

(4) Sections 27 to 34 shall not apply to cultural monuments owned by the church and to other cultural monuments serving the practice of religion.⁴⁸

substance changed or impaired, equipped with fittings, writings or signs or advertising, removed from an environment, destroyed or disposed of with the approval of the monument conservation authority.

⁴⁸ Note: Sections 27 to 34 govern the preconditions for expropriation and compensation for such.

H) Burial System

1. Act on the Bodies, Burials and Cemetery System in the Land of Mecklenburg Western Pommerania - Burials Act (Gesetz über das Leichen-, Bestattungs- und Friedhofswesen im Land Mecklenburg-Vorpommern - Bestattungsgesetz - BestattG M-V)
of 3 July 1998 (Law and Ordinance Gazette [GVOBl.] p. 617)

Section 13 Burial

(...)

(2) In the event of cremation, the urn shall be buried with the ashes on a cemetery or in a suitable form in a church.(...)

Section 14 Cemeteries

(1) Bearers of cemeteries may only be communities such as religious communities which are corporations under public law.

(2) The municipalities shall establish and maintain cemeteries (municipal cemeteries). This shall not apply if a church cemetery exists in the municipality or the municipality ensures by agreement that the cemetery of another bearer can be used. The first and second sentences shall apply mutatis mutandis to mortuaries.

(3) Religious communities which are corporations under public law, in particular churches and parishes, may establish and maintain cemeteries (church cemeteries). On church cemeteries, it shall be made possible to bury all persons deceased in the municipality if the municipality does not maintain its own cemetery and has not concluded an agreement in accordance with subsection (2) second sentence. In such cases, the municipality shall contribute towards those costs of the cemetery that cannot be covered by fees for use.

(4) If the bearer of a church cemetery levies fees for use in the shape of public-law fees, these shall be collected on application of the mayors of urban districts, the mayors of independent municipalities and the supervisors of the offices in execution assistance in accordance with the provisions stipulated in respect of administrative execution. The cost of execution assistance not covered by payments from the debtor shall be refunded to the law enforcement authority by the bearer of the church cemetery.

(5) The bearer of the cemetery shall govern the order, use and formation, as well as exercise of commercial activities by means of cemetery rules. The bearer shall be obligated to keep a record of burials.

(6) The establishment or expansion of cemeteries shall require the approval which the chief administrative officers or the mayors of urban districts give in agreement with the competent water authorities. Approval shall be communicated in public.

I) Youth and Voluntary Welfare Institutions

1. Federal Social Assistance Act (*Bundessozialhilfegesetz - BSHG*)

of 30 June 1961 (Federal Law Gazette [BGBl.] Part I p. 615 corr. p. 1815), in the version of the proclamation of 23 March 1994 (BGBl. Part I pp. 646 and 2975), last amended by Act of 14 December 2001 (BGBl. Part I p. 3728).

Part 1: General Provisions

Section 3 Social Assistance by the Particularities of the Individual Case

(...)

(3) On request, the assistance recipient shall be accommodated in an institution in which he/she can be cared for by clerics of his/her confession.

Section 10 Relationship with Independent Welfare

(1) The position of the churches and religious societies under public law, as well as the associations of independent welfare as bearers of separate social tasks and their activities to carry out these tasks, shall remain unaffected by this act.

(2) The bearers of social assistance should in implementing this act work together with the churches and religious societies under public law, as well as with the independent welfare associations, and in doing so respect their independence in goals and implementation of their tasks.

(3) Cooperation should aim to effectively complement social assistance and the activity of free welfare care for the well-being of those seeking assistance. The social assistance organisations should suitably support the independent welfare associations in their activity in the field of social assistance.

(4) If assistance in individual cases is ensured by independent welfare organisations, the bearers of social assistance are to refrain from implementing their own measures; this shall not apply to the granting of monetary payments.

(5) The bearers of social assistance may in general involve the independent welfare associations in carrying out their tasks in accordance with this act, or may assign to them the implementation of such acts if the associations on the involvement or transfer. The bearers of social assistance shall remain responsible towards those seeking assistance.

Part 7: Facilities, Working Groups

Section 93 Facilities

(1) The bearers of social assistance should not create their own facilities to grant social assistance, including services, if suitable facilities of other organisations are available, can be expanded or created. (...)

Section 93d Empowerment to Issue Orders, Framework Agreements

(...)

(2) The supra-local bearers of social assistance and the municipal central associations at Land level shall conclude with the associations of the bearers of the facilities at Land level joint and uniform framework agreements regarding performance, emolument and examination agreements in accordance with section 93 subsection (2) in the version that is valid from 1 January 1999. In respect of facilities to be classified as a church or religious community under public law or another non-profit bearer, the framework agreements may also be concluded by the church or religious community, or by the welfare association to which the facility belongs. The framework agreements should take account of the characteristics and particularities of the respective type of assistance.

(...)

2. Social Code (Sozialgesetzbuch - SGB) Eighth Book (VIII): Child and Youth Assistance
of 26 June 1990 (Federal Law Gazette [BGBl] Part I pp. 1163 and 1166), in accordance with the proclamation of the new version of 8 December 1998 (BGBl. Part I p. 3546), last amended by Act of 15 December 2001 (BGBl. Part I p. 3762)

Section 74 Promotion of Independent Youth Assistance

(1) The bearers of public youth assistance should encourage voluntary activities in the field of youth assistance; they should promote it if the respective bearer

1. meets the specialist preconditions for the planned measure,
2. offers an assurance of an expedient, economic use of the funds,
3. pursues non-profit goals,
4. provides suitable performance of its own, and
5. offers an assurance for work in accordance with the goals of the Basic Law.

Long-term promotion shall generally require recognition as an independent youth assistance bearer in accordance with section 75.

(...)

Section 75 Recognition as an Independent Youth Assistance Organisation

(...)

(3) The churches and religious communities under public law, as well as the independent welfare bearers combined at Federal level, shall be recognised bearers of independent youth assistance.

3. Federal Child Benefit Act (*Bundeskindergeldgesetz - BKGG*)

in the version of the proclamation of 2 January 2002

(Federal Law Gazette [BGBl.] Part I p. 6)

Section 1 Entitled Parties

(1) Child benefit in accordance with this act shall be received by those who are not unrestrictedly taxable in accordance with section 1 subsections (1) and (2) of the Income Tax Act (Einkommensteuergesetz) and also not treated as unrestrictedly taxable in accordance with section 1 subsection (3) of the Income Tax Act, and

(...)

2. who receive support payments as a development worker within the meaning of section 4 subsection (1) No. 1 of the Development Workers Act (Entwicklungshelfer-Gesetz) or as a missionary of the Missionary Societies, the members or agreement partners of Hamburg Protestant Missionary Society, the Working Group of Protestant Missions or of the German Catholic Mission Council or the Working group of Pentecost-charismatic Missionary Societies, or

(...)

J) Law on Military and Alternative Service

1. Act on Compulsory Military Service (Wehrpflichtgesetz)

of 21 July 1956 (Federal law Gazette [BGBl.] Part I p. 651), in the version of the proclamation of 20 February 2002 (BGBl. Part I p. 954)

Part 1: Compulsory Military Service

Section 11 Exemption from Military Service

(1) The following shall be exempt from military service

1. ordained clerics of the Protestant confession,
2. clerics of the Roman Catholic confession who have been ordained to the diaconship,
3. full-time clerics of other confessions whose office corresponds to that of an ordained cleric of the Protestant or of a cleric of the Roman Catholic confession who has been ordained to the diaconship,

(...)

Section 12 Deferment of Military Service

(...)

(2) On request, conscripts shall be postponed from military service who are preparing for spiritual office (section 11).

Section 13 Indispensability

(1) To compensate for the need for staff for the tasks of the Federal Armed Forces and other tasks, a conscript may be regarded as indispensable for military service in the public interest if and as long as the work he/she carries out cannot be foregone. (...)

(2) The replacement military authority shall decide on indispensability at the suggestion of the competent administrative authority. The churches and religious communities shall also have the right of proposal for their employees if they are corporations under public law. (...)

(...)

2. Act on Refusal to render Military Service involving the Use of Arms on Grounds of Conscience (Gesetz über die Verweigerung des Kriegsdienstes mit der Waffe aus Gewissensgründen - Kriegsdienstverweigerungsgesetz — KDVG)

of 28 February 1983 (Federal Law Gazette [BGBl.] Part I p. 203), last amended by Act of 6 December 2001 (BGBl. Part I p. 1676)

Section 11 [Representation of the Applicant Before Committees]

(...)

(2) Persons appointed by the churches and religious communities which are corporations under public law shall also be admitted to represent the applicant free of charge before the committee.

3. Act on Civilian Service for Conscientious Objectors (Gesetz über den Zivildienst der Kriegsdienstverweigerer - Zivildienstgesetz - ZDG)

of 13 January 1960 (Federal Law Gazette [BGBl.] Part I p. 10) in the version of the proclamation of 28 September 1994 (BGBl. Part I p. 2811), last amended by Act of 20 December 2001 (BGBl. Part I p. 4013)

Section 2a Advisory Council for the Civilian Service

(1) An advisory council for the civilian service shall be formed at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The advisory council shall advise the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in matters concerned with civilian service, including the question of what tasks the civilian service conscripts (persons liable for civilian service) are to be allocated outside the social field.

(2) The advisory council shall consist of

(...)

3. one representative each of the Protestant and Catholic Churches,

(...)

Section 10 Exemption from Civilian Service

(1) The following shall be exempt from civilian service

1. ordained clerics of the Protestant confession,

2. clerics of the Roman Catholic confession who have been ordained to the diaconship,

3. full-time clerics of other confessions whose office corresponds to that of an ordained cleric of the Protestant or of a cleric of the Roman Catholic confession who has been ordained to the diaconship,

(...)

Section 11 Deferment of Civilian Service

(...)

(2) Recognised conscientious objectors preparing for the spiritual office shall be deferred from civilian service on application.

Section 12 Applications for Exemption and Deferment

(1) Applications in accordance with section 10 subsection (2) and section 11 subsections (2) and (4) shall be made in writing or placed on the record of the Federal agency. They shall be reasoned.

(2) (...) The following shall be submitted with applications in accordance with section 11 subsection (2)

1. proof of ordinary theological studies or of ordinary theological training, and
2. a declaration by the competent Land Church office, the Episcopal authority, the superior of the religious order or the corresponding higher authority of another religious community, that the conscientious objector is preparing for the spiritual office.

(...)

Section 16 Indispensability

(1) To compensate for the public interest in calling to civilian service and in covering the staffing needed outside the civilian service, a person liable for civilian service may be regarded as indispensable for civilian service in the public interest if the latter public interest outweighs so long as he/she cannot be done without for the activity carried out by him/her outside civilian service. (...)

(2) The competent administrative authority shall decide on indispensability at the suggestion of the competent administrative authority. The churches and religious communities shall also have a right of proposal for their employees if they are corporations under public law. (...)

(...)

Section 38 Cure of Souls

The conscript shall have a right to undisturbed religious exercise. Participation in religious services shall be voluntary.

4. Act on the Legal Position of Soldiers - Soldiers Act (Gesetz über die Rechtsstellung der Soldaten - Soldatengesetz)

of 19 March 1956 (Federal Law Gazette [BGBl.] Part I p. 114), in the version of the proclamation of 15 December 1995 (BGBl. Part I p. 1737), last amended by Act of 20 December 2001 (BGBl. Part I p. 4013)

Section 36 Cure of Souls

The soldier shall have a right to undisturbed practice of religion. Participation in religious services shall be voluntary.

5. *Act on Military Chaplaincy (Gesetz über die Militärseelsorge)*⁴⁹
of 26 July 1957 (Federal Law Gazette [BGBl.] Part II p. 701)

Article 1

(1) The agreement between the Federal Republic of Germany and the Protestant Church in Germany governing Protestant military chaplaincy signed in Bonn on 22 February 1957 is approved.

(...)

Article 2

The public service law provisions of the agreement named in article 1 shall be applied analogously to the Catholic military clerics.

⁴⁹ One of the State Church Treaties for the field of military chaplaincy can be found in the third part at No. 6.

K) Imprisonment

- 1. Act on the Execution of Prison Sentences and Measures of Rehabilitation and Security - Prison Act (Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßnahmen der Besserung und Sicherung - Strafvollzugsgesetz - StVollzG)**
of 16 March 1976 (Federal Law Gazette [BGBl.] Part I pp. 581 and 2088; BGBl. Part I 1977 p. 436), last amended by Act of 10 December 2001 (BGBl. Part I p. 3422)

Second Part: Execution of Prison Sentence

Section 16 Time of Release

(...)

(2) If the end of the sentence falls on a Saturday or Sunday, a religious holiday, the first working day after Easter or Whitsuntide or in the period between 22 December and 2 January, the inmate may be released on this day or on the working day prior to this day or period if this is reasonable in accordance with the length of the sentence and no welfare-related reasons constitute an obstacle thereto.

(...)

Section 21 Prison Food

The composition and nutritional value of prison food shall be supervised by a doctor. Special food shall be granted as ordered by the doctor. Inmates shall be enabled to follow the nutritional rules of their religious community.

Section 53 Cure of Souls

(1) The inmate may not be refused religious care by a pastoral worker of his/her religious community. At his request, he/she shall be assisted in contacting a pastoral worker of his/her religious community.

(2) The inmate may possess basic religious writings. They may only be removed in the event of gross abuse.

(3) The inmate shall be permitted a suitable quantity of items of religious use.

Section 54 Religious Events

(1) The inmate shall have the right to attend religious services and other religious events of his/her confession.

(2) The inmate shall be permitted to attend the religious service or religious events of another religious community if the pastoral worker agrees.

(3) The inmate may be excluded from attending religious services or other religious events if this is necessary for prevailing reasons of security or order; the pastoral worker should be heard first.

Section 55 Ideological Communities

Sections 53 and 54 shall apply mutatis mutandis in respect of members of ideological confessions.

Fourth Part: Execution Authorities

Section 145 Determination of Occupancy Capacity

The supervisory authority shall determine occupancy capacity for each institution such that suitable accommodation is guaranteed during rest time (section 18). It shall be taken into account that a sufficient number of places for work, training and further training, as well as premises for cure of souls, leisure, sport, therapeutic measures and visits should be provided.

Section 154 Cooperation

(...)

(2) Close cooperation should prevail between the authorities and agencies of discharged prisoners' assistance, probation assistance, supervisory bodies for conduct supervision, labour offices, bearers of social insurance and social assistance organisations, assistance facilities of other authorities and independent welfare associations. The execution authorities should work together with persons and associations whose influence may promote integration of the inmates.

Section 157 Cure of Souls

(1) Pastoral workers shall be appointed or placed under contract on a full-time basis in agreement with the respective religious community

(2) If the small number of members of a religious community does not justify cure of souls in accordance with subsection (1), cure of souls shall be permitted by other means.

(3) With the consent of the prison director, prison chaplains may use independent assistant pastoral workers and bring in pastoral workers from outside for religious services and for other religious events.

Fifth Part: Execution of Further Measures of Deprivation of Liberty in Correctional Facilities, Data Protection, Social and Unemployment Insurance, Final Provisions

Section 182 Protection of Special Data

(1) The religious or ideological confession of an inmate and personal data collected on the occasion of medical examinations may not be made generally known in the prison. Other personal data relating to the inmate may be made generally known within the prison if this is necessary for an ordered co-existence in the prison; section 180 subsections (8) to (10) shall remain unaffected.

(...)

**2. Remand Detention Execution Ordinance
(Untersuchungshaftvollzugsordnung - UVollzO)**

of 12 February 1953 (cf. e.g. proclamation in Bavaria Bavarian Justice Ministry Gazette [JMBl. Bay.] 1953 p. 76), in the version of 15 December 1976, brought into force by decrees by the Land administrations of justice: e.g. Bavaria: proclamation of 15 December 1976 (JMBl. Bay. 1977 p. 49)

No. 47 Religious Events

- (1) The inmate may attend joint religious services and other religious events of his/her confession unless the judge orders otherwise with regard to the purpose of remand detention or for reasons of order in the prison.
- (2) Under the same preconditions, the inmate may attend religious events of another religious community if its pastoral worker consents.
- (3) If the inmate misuses attendance at religious events for purposes of collusion or otherwise for unauthorised contact with other inmates, or if he/she disturbs the event, he/she may be excluded by the prison director in agreement with the chaplain from further attendance at these events. Exclusion shall require the approval of the judge (section 119 subsection 6 of the Code of Criminal Procedure [StPO]), who shall also decide on readmission, where appropriate after hearing the pastoral worker.
- (4) Joint religious events involving remand and convicted inmates shall be permissible unless otherwise ordered by the judge in exceptional cases.

No. 48 Individual Cure of Souls

- (1) The inmate shall have the right to receive the advice of a pastoral worker of his/her confession. No. 47 subsection (2) shall apply analogously.
- (2) The full-time or contracted appointed prison chaplain may visit the inmate without permission.
- (3) The judge shall grant other chaplains than prison chaplains permission to visit the inmate for pastoral purposes; the judge shall determine whether the visit is to be supervised.

No. 48a Ideological Communities

Nos. 47 and 48 shall apply mutatis mutandis to members of ideological confessions.

3. Juvenile Courts Act (Jugendgerichtsgesetz - JGG)

of 4 August 1953 (Federal Law Gazette [BGBl.] Part I p. 751), in the version of the proclamation of 11 December 1974 (BGBl. Part I p. 3427), last amended by Act of 19 December 2000 (BGBl. Part I p. 1756)

Section 91 Task of Youth Custody

(...)

(2) Order, work, instruction, physical exercise and sensible occupation in free time shall form the basis for this education. The vocational performance of the convicts shall be promoted. Training facilities shall be established. Cure of souls shall be ensured.

Section 115 Legal Provisions of the Federal Government Related to Prison

(1) The Federal Government shall be empowered with the consent of the Federal Council for the execution of youth custody, of youth detention and remand detention to issue provisions by means of a legal ordinance⁵⁰ regarding the nature of accommodation, treatment, the life-style, the educational, pastoral and vocational care, work, instruction, healthcare and physical exercise, leisure, contact with the outside world, order and security in the prison and sanctioning of breaches thereagainst, reception and release, as well as coercion with authorities and agencies serving youth care and youth assistance.

(...)

4. Ordinance relating to the Execution of Juvenile Detention - Juvenile Detention Execution Ordinance (Verordnung über den Vollzug des Jugendarrestes - Jugendarrestvollzugsordnung - JAVollzO)

of 12 August 1966 (Federal Law Gazette [BGBl.] Part I p. 505), in the version of the proclamation of 30 November 1976 (BGBl. Part I p. 3270), last amended by Act of 26 June 1990 (BGBl. Part I p. 1163)

Section 1 Execution Facilities

(...)

(3) Male and female juveniles shall be separated. This may be abrogated in order to enable juveniles to attend religious events and educational activities.

Section 19 Cure of Souls

(1) Proper cure of souls shall be ensured.

(2) Juveniles shall have the right to receive the advice of the appointed pastoral worker of their current or previous confession, and to attend joint religious services and other religious events of their confession in the prison.

⁵⁰ Cf. on this the Youth Detention Execution Ordinance (Jugendarrestvollzugsordnung) printed below at No. 4 which is based on this empowerment.

(3) If a cleric of this confession is not appointed, juveniles may be visited by a cleric of their confession.

L) Law on Civil Servants and Judges

1. Framework Act to Unify the Law on Civil Service - Civil Service Law Framework Act (Rahmengesetz zur Vereinheitlichung des Beamtenrechts - Beamtenrechtsrahmengesetz - BRRG)

*of 1 July 1957 (Federal Law Gazette [BGBl.] Part I p. 677), in the version of the proclamation
of 31 March 1999 (BGBl. Part I p. 654), last amended by Act of 16 February 2002
(BGBl. Part I p. 693)*

Chapter I: Provisions for Land Legislation

Part 1: The Employment of Civil Servants

Section 7 [Principle of Equality]

Nominations shall be in accordance with aptitude, qualifications and professional performance without regard to gender, origin, race, faith, religious or political views, origin or connections.

Chapter II: Provisions Which Apply Uniformly and Directly

Part 1: General Provisions

Section 121 [Employer Capacity]

The right to have civil servants shall be possessed, apart from the Federation, by

1. the Länder, the municipalities and the municipal associations,
2. other corporations, institutes and foundations under public law who have this right at the time of entry into force of this act or to whom it is given after this time by statute, executive order law or ordinance; such ordinances shall require the approval of an agency thereto empowered by law.

Chapter III: General Final Provisions

Section 135 [No Application of this Act to Public-Law Religious Societies]

This act shall not apply to the public-law religious societies and their associations. The latter shall remain free to govern the legal circumstances of their civil servants and pastors in accordance with this act and to declare applicable the provisions of Chapter II Part II.

2. Federal Act on Civil Servants (*Bundesbeamtengesetz*)

of 14 July 1953 (Federal Law Gazette [BGBl.] Part I p. 551), in the version of the proclamation of 31 March 1999 (BGBl. Part I p. 675), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)

Section 8 [Job Advertisements - Selection]

(1) Applicants shall be identified by means of a job advertisement. Their selection shall be effected in accordance with aptitude, qualifications and professional performance without regard to gender, descent, race, faith, religious or political views, origin or connections.

(...)

Section 58 [Form of Oath]⁵¹

(1) The civil servant shall give the following oath of office:

»I swear to preserve the Basic Law for the Federal Republic of Germany and all statutes applicable in the Federal Republic and to carry out my official duties conscientiously, so help me God.«

(2) The oath may also be given without the words »so help me God«.

(3) If a statute permits the members of a religious society to use another form of affirmation instead of the words »I swear«, a civil servant who is a member of such a religious community may use this form of affirmation.

(4) In cases in which in accordance with section 7 subsection (3) an exception from section 7 subsection (1) No. 1 has been permitted, the taking of an oath can be waived; unless otherwise provided, the civil servant shall promise solemnly that he/she will carry out his/her official duties conscientiously.

3. Federal Act on Remuneration (*Bundesbesoldungsgesetz*)

of 23 May 1975 (Federal Law Gazette [BGBl.] Part I p. 1173), in the version of the proclamation of 3 December 1998 (BGBl. Part I p. 3434), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)

Section 1 Area of Application

(1) This act shall regulate the remuneration of

1. Federal civil servants, civil servants of the Länder, the municipalities, the municipal associations and other corporations, institutes and foundations under public law subject to the supervision of a Land; honorary civil servants and the civil servants until recalled, who are deployed on an ad-hoc basis shall be exempted therefrom,

(...)

⁵¹ Note: Comparable regulations are to be found in section 9 subsection (1) of the Soldiers Act (*Soldatengesetz*) in relation to the oath taken by professional and regular soldiers, and in section 62 of the Hamburg Civil Servants Act (*Hamburgisches Beamtengesetz*).

(5) This act shall not apply to the public-law religious societies and their associations.

Section 28 Remuneration Service Age

(1) The remuneration service age shall commence on the first of the month in which the civil servant or soldier has turned twenty-one.

(2) The start of the remuneration service age in accordance with subsection (1) shall be postponed by times after turning thirty-one in which there was no right to remuneration, by one-quarter of the time until the age of thirty-five and by one-half of the further time. (...) Remuneration within the meaning of the first sentence shall be the equivalent of payments from full-time work in the service of a public-law employer (section 29), in the service of public-law religious societies and their associations and in the service of another employer applying the collective agreements that pertain in the public service or collective agreements with largely the same content and in which the state is substantially involved by payment of contributions or subsidies or in another manner.

(...)

Section 29 Public-Law Employers

(1) Public-law employers within the meaning of this act shall be the Reich, the Federation, the Länder, the municipalities (municipal associations) and other corporations, institutes and public-law foundations, with the exception of the public-law religious societies and their associations.

Section 40 Stages of the Family Allowance

(...)

(6) Public service within the meaning of subsections (1), (4) and (5)⁵² is an activity performed in the service of the Federation, of a Land, of a municipality or of other corporations, institutes and foundations under public law or of the associations of such; work in public-law religious societies or their associations shall be exempted therefrom unless the preconditions of the third sentence are met with organisationally-independent facilities, in particular schools, universities, hospitals, kindergartens, homes for the elderly. (...)

⁵² Subsections 1, 4 and 5 govern the preconditions for receipt of a family allowance.

4. Act Governing Benefits Relating to Civil Servants and Judges in the Federation and the Länder - Civil Servants Benefits Act (Gesetz über die Versorgung der Beamten und Richter in Bund und Ländern - Beamtenversorgungsgesetz - BeamtVG)

of 24 August 1976 (Federal Law Gazette [BGBl.] Part I p. 3839), in the version of the proclamation of 16 March 1999 (BGBl. Part I p. 322, corr. pp. 847 and 2033), last amended by Act of 16 February 2002 (BGBl. Part I p. 693)

Part I: General Provisions

Section 1 Area of Application

(1) This act governs the benefits relating to Federal civil servants, civil servants of the Länder, the municipalities, the municipal associations and the other corporations, institutes and foundations under public law subject to the supervision of a Land.

(...)

(3) This act shall not apply to the public-law religious societies and their associations.⁵³

Part II: Pension, Maintenance Contribution

Section 11 Other Times

The time during which a civil servant after reaching the age of seventeen prior to being called to the public service

1. (...)

b) worked full-time in the service of public-law religious societies or their associations (article 140 of the Basic Law) or in the public or non-public school service (...)

or (...)

may be taken into account as pensionable service time, but the time in accordance with No. 1 (a) and No. 3 may be counted at most up to one-half and as a rule not more than ten years.

Part VII: Shared Provisions

Section 53 Combination of Pension Payments with Work Income and Income Equivalent to Work Income

(...)

(8) On expiry of the month in which the pensioner reaches the age of sixty-five, subsections (1) to (7)⁵⁴ shall apply only to work income from use in the public service (deployment income).

⁵³ Note: A comparable regulation on the non-applicability of the corresponding act to churches, other public law religious communities and their associations is contained inter alia in section 1 subsection (2) of the Act on the Grant of an Annual Special Payment (Gesetz über die Gewährung einer jährlichen Sonderzuwendung) of 15.7.1965 (BGBl. Part I p. 609), in the version of the proclamation of 15.12.1998 (BGBl. Part I p. 3642), last amended on 16.2.2002 (BGBl. Part I p. 693) and section 6 of the Act on Capital-forming Benefits for Civil Servants with Life Tenure, Judges, Professional Soldiers and Regular Soldiers (Gesetz über vermögenswirksame Leistungen für Beamte, Richter, Berufssoldaten und Soldaten auf Zeit) of 17.7.1970 (BGBl. Part I p. 1097), in the version of the proclamation of 15.12.1998 (BGBl. Part I p. 3646).

This shall be any employment in the service of corporations, institutes and foundations of the German public law or their associations, excepting employment in public-law religious societies or their associations. (...)

Part XV: Final Provisions

Section 105 Cessation of Application

Where legal provisions correspond to or contradict the provisions of this act, they shall cease to apply with the entry into force of this act. This shall not apply to the following provisions in the version valid when this act comes into force:

(...)

5. Land statutes and administrative agreements relating to the application of the pension provisions in use in the service of public-law religious societies and their associations or at replacement schools,

(...)

5. German Judiciary Act (*Deutsches Richtergesetz*)

of 8 September 1961 (Federal Law Gazette [BGBl.] Part I p. 1665), in the version of the proclamation of 19 April 1972 (BGBl. Part I p. 713), last amended by Act of 9 July 2001 (BGBl. Part I p. 1510)

Part I: Judicial Office in the Federation and the Länder

Section 38 Judges Oath⁵⁵

(1) The judge⁵⁶ shall take the following oath in a public sitting of a court:

»I swear to exercise the office of judge true to the Basic Law for the Federal Republic of Germany and true to the statutes, to the best of my knowledge and ability and to judge without bias, and only to serve truth and justice, so help me God.«

(2) The oath may be taken without the words »so help me God«.

(3) The oath may contain for judges in the service of a Land an obligation to preserve the Land Constitution, and may be given publicly in another manner instead of before a court.

⁵⁴ Note: Subsections (1) to (7) determine that a pensioner who receives work or work replacement income additionally receives his/her pension payments on principle only until reaching a specific maximum limit.

⁵⁵ Note: A similar provision is also contained in section 11 of the Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz) of 12.3.1951 (BGBl. Part I p. 243), in the version of 11.8.1993 (BGBl. Part I p. 1473), last amended on 16.7.1998 (BGBl. Part I p. 1823). At Land level, there is a similar provision, for instance in section 2 of the Hamburg Judiciary Act (Hamburgisches Richtergesetz) of 2.5.1991 (Hamburg Law and Ordinance Gazette [HmbGVBl.] p. 169), last amended on 25.5.1999 (HmGVBl. pp. 95 and 97).

⁵⁶ Note: Comparable provisions for the taking of an oath by honorary judges can be found inter alia in section 45 of the Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz) and - at Land level - for instance in section 3 of the Hamburg Judiciary Act (cf. the source information in the previous footnote).

6. Hamburg Civil Service Act (*Hamburgisches Beamtengesetz - HmbBG*)
of 13 March 1961 (Hamburg Law and Ordinance Gazette [HmbGVBl.] p. 49), in the version of
29 November 1977 (Hamburg Law and Ordinance Gazette p. 367), last amended by Act
of 30 January 2001 (Hamburg Law and Ordinance Gazette p. 19)

Part I: Area of Application

Section 1

- (1) This act⁵⁷ shall apply in addition to the directly applicable civil servants law provisions of the Federation to the civil servants of the Free and Hanseatic City of Hamburg (Land civil servants) and to civil servants of the indirect Land corporations, institutes and foundations under public law (corporation civil servants) unless otherwise prescribed in detail.
- (2) The act shall not apply to civil servants of the churches and religious societies.

Part II: Public Service Employment

Section 7

- (1) Applicants shall be selected by their suitability, qualification and professional performance without regard to gender, sexual identity and orientation, descent, race, faith, religious or political views, home, origin or connections.
- (...)

⁵⁷ Note: This act governs inter alia public service employment, the legal position of civil servants, personnel, complaints and legal protection.

M) Funding

1. Ordinance on Dues (Abgabenordnung - AO)

*of 16 March 1976 (Federal Law Gazette [BGBl.] Part I p. 613; BGBl. Part I 1977 p. 269),
last amended by Act of 20 December 2001 (BGBl. Part I p 3793)*

Part I: Introductory Provisions

Fourth Chapter: Fiscal Confidentiality

Section 30 Fiscal Confidentiality

(1) Office-holders shall keep fiscal confidentiality.

(...)

(3) The following shall be deemed equivalent to office-holders

(...)

3. holders of offices in the churches and other religious communities which are corporations under public law.

Section 31 Communication of Basis for Taxation

(1) The finance authorities shall be entitled to communicate the bases for taxation, basic tax assessment amounts and tax amounts to corporations under public law, including the religious communities which are corporations under public law, to determine taxes in connection with these bases for taxation, basic tax assessment amounts or tax amounts.

(...)

Part II: Law on Liability for Tax

Third Chapter: Tax Favoured Objectives

Section 51 General Provisions

If a statute grants tax relief because a corporation exclusively and directly serves non-profit, charitable or ecclesiastical purposes (tax favoured objectives) the following provisions shall apply. Corporations shall be understood to mean corporations, associations of persons and estates within the meaning of the Corporate Gains Tax Act (Körperschaftsteuergesetz). Functional sub-divisions (departments) of corporations shall not be deemed to be independent taxpayers.

Section 52 Non-Profit Purposes

(1) A corporation pursues non-profit purposes if its activities aim to selflessly promote the public in a material, spiritual or moral field. Promotion of the public shall not apply if the

group of persons benefited by the promotion is defined, such as membership of a family or the staff of an enterprise, or as a result of its delimitation, in particular by spatial or professional characteristics, and hence must be permanently small. Promotion of the public shall not apply solely because a corporation inputs its funds to a corporation under public law.

(2) Under the preconditions of subsection (1), the following shall be recognised as promotion of the public, in particular:

1. promotion (...) of religion, (...)

(...)

Section 54 Ecclesiastical Purposes

(1) A corporation pursues ecclesiastical purposes if its activities aim to selflessly promote a religious community which is a corporation under public law.

(2) These purposes shall include in particular the establishment, equipment and maintenance of houses of God and church community buildings, holding religious services, training of clerics, giving religious instruction, burial and care for the remembrance of the dead, as well as the administration of church assets, payment of clerics, church civil servants and church servants, old-age and disabled pensions for these persons and pensions for their widows and orphans.

Section 62 Exceptions from the Statutory Commitment of Assets

With the operation of commercial enterprise of corporations under public law, with state-supervised foundations, with non-independent foundations administrated by a corporation under public law and with clerical communities (orders, congregations) the formation of assets shall not require to be determined in the statutes.

Section 64 Economic Business Operations with Liability to Tax

(1) If the law rules out tax exemption to the extent that an economic business operation is operated (section 14), the corporation shall lose the tax advantage for the tax basis to be allocated to the business operation (income, turnover, assets) where the economic business operation is not a purpose-determined commercial activity (sections 65 to 68).

(...)

Section 68 Individual Purpose-Determined Commercial Activities

Purpose-determined commercial activities shall also be:

(...)

6. lotteries and lottery draws approved by the competent authorities, if the net yield is used exclusively and directly to promote charitable, ecclesiastical or non-profit purposes,

(...)

Part III: General Procedural Provisions

Chapter I: Procedural Principles

Section 102 Right to Refuse to Provide Information to Protect Specific Professional Secrets

(1) Information may also be refused by:

1. clerics on what has been entrusted or become known to them in their capacity as spiritual advisers,

(...)

(2) Equal to the persons named in subsection (1) Nos. 1 to 3 shall be their assistants and persons persons, while being trained for their profession participate in this professional activity. The persons named in subsection (1) Nos. 1 to 3 shall decide on the exercise of the right of these auxiliaries to refuse to provide information unless such decision cannot be obtained in the foreseeable future.

Part IV: Implementation of Taxation

Chapter I: Collation of Taxpayers

Section 135 Duty to Participate in Recording Civil Status and Establishments

(...)

(2) The inhabitants and sub-tenants of a dwelling shall provide the information on themselves and on the persons belonging to their households on the official forms which are necessary to record personnel and establishments, in particular with regard to names, civil status, date and place of birth, religious affiliation, place of residence, work or employment, establishments.

(...)

Part VIII: Criminal and Criminal Fine provisions; Criminal and Criminal Fine Proceedings

Chapter III: Criminal Procedure

Section 386 Competence of the Finance Authority in Fiscal Criminal Offences

(...)

(2) The finance authority shall independently effect the investigation proceedings within the limits imposed by section 399 subsection (1) and sections 400 and 401 if the offence

(...)

2. simultaneously also breaches other criminal statutes and their violation relates to church taxes or other public-law levies linked to the tax basis, basic tax assessment amounts or tax amounts.

2. 1997 Income Tax Act (Einkommensteuergesetz - EStG 1997)

new version of 16 April 1997 (Federal Tax Gazette [BStBl.] Part I p. 821), last amended by Act of 20 December 2001 (BGBl. Part I p. 3794)

II. Income

Section 3 Tax-Free Income

The following shall be tax free

(...)

26. income from secondary-occupation work as an exercise supervisor, trainer, educator, carer or comparable secondary-occupation activities, from secondary-occupation artistic activities or the secondary-occupation care of old, sick or disabled people in the service of or on behalf of a domestic legal entity under public law or of a facility falling under section 5 subsection (1) No. 9 of the Corporate Gains Tax Act (Körperschaftsteuergesetz) to promote non-profit, charitable and ecclesiastical purposes (sections 52 to 54 of the Ordinance on Dues) up to a total of 1.848 Euro per year. If the income for the work designated in the first sentence exceeds the tax-free amount, the expenses directly economically connected with the secondary-occupation work may in divergence to section 3c only in so far be deducted from tax as operational or advertising costs insofar as they exceed the amount of the tax-free income;

(...)

Section 10 Special Expenses

(1) Special expenses shall be the following expenditure if they are neither operational expenses nor advertising costs:

(...)

4. paid church tax;

(...)

Section 10b Tax Favoured Objectives

(1) Expenses to promote charitable, church, religious, scientific and those non-profit purposes recognised as particularly worthy of promotion shall be deductible up to the amount of five percent of the total income amount or two thousandths of the total of the whole turnover and salaries and wages expended in the calendar year as special expenses. For scientific, charitable, and cultural purposes recognised as particularly worthy of promotion the percentage shall increase from five by another five percent. Allowances to foundations under public law and to tax-exempted foundations under private law in accordance with section 5 subsection (1) No. 9 of the Corporate Gains Tax Act to promote objectives enjoying favourable fiscal treatment within the meaning of sections 52 to 54 of the Ordinance on Dues with the exception of purposes that are non-profit in accordance with section 52 subsection (2) No. 4 of the Ordinance on Dues shall be additionally deductible up to 40,000 Deutsche Mark, from 1 January 2002 20,450 Euro. If an individual allowance of at least 25.565 Euro to promote scientific, charitable or cultural purposes recognised as particularly worthy of promotion exceeds these maximum amounts, it shall be deducted in connection with the maximum

amounts in the assessment period of the allowance, in the previous and in five subsequent assessment periods. Section 10d shall apply mutatis mutandis.

(...)

VI. Levying of Taxes

Section 44c Refund of Capital Gains Tax to Specific Corporations, Groups of Persons and Estates

(1) If the creditor is a domestic

(...)

3. legal entity under public law exclusively and directly serving ecclesiastical purposes, the Federal Finance Office shall refund except in cases falling under section 44a subsection (4) on application of the creditor the retained and paid capital gains tax. This shall be conditional on the creditor proving to the Federal Finance Office by a certification of the finance office competent for its management or its seat that it is a corporation, group of persons or estate within the meaning of the first sentence. Section 44a subsection (2) second to fourth sentences and subsection 4 fifth sentence shall apply mutatis mutandis. The application shall apart from the certification in accordance with the second sentence be supplemented by a certification within the meaning of section 45a subsection (2) or (3).

(...)

X. Child Benefit

Section 72 Determination and Payment of Child Benefit to Members of the Public Service

(1) If persons who

1. are in a service, official or training relationship under public law, with the exception of honorary civil servants, or
2. receive pension payments in accordance with provisions or principles relating to the public service or to the military, or
3. are employees of the Federation, of a Land, of a municipality, of a municipal association or of another corporation, of an institute or of a foundation under public law, including those employed in providing them with vocational training,

are entitled to child benefit in accordance with this act, it shall be set and paid by the corporations, institutes or foundations under public law. The legal persons named shall be family cash offices in this sense.

(...)

(3) Subsection (1) shall not apply to persons who receive their remuneration

1. from an employer in the sphere of the religious societies under public law, or
2. from a central independent welfare association, a membership association directly or indirectly connected with the latter or of a facility or institute connected to such an association.

(...)

3. 1999 Corporate Gains Tax Act (*Körperschaftsteuergesetz - KStG*)

of 31 August 1976 (Federal Law Gazette [BGBl.] Part I p. 2597), in the version of the proclamation of 22 April 1999 (BGBl. Part I p. 817), last amended by Act of 20 December 2001 (BGBl. Part I p. 3794)

Section 5 Exemptions

(1) The following shall be exempt from corporate gains tax

(...)

3. pension, death and health insurance funds granting a legal right to persons benefiting from payments from the funds or who are to benefit, and have legal capacity (beneficiaries), and relief funds which have legal capacity not granting their beneficiaries a legal claim,

a) if the fund restricts itself

(...)

bb) to members or former members of the central independent welfare associations (German Working Men's Welfare Association, German Association of (Roman-Catholic) Charitable Organisations ("Caritas"), German Equal Representation Welfare Association, German Red Cross, Domestic Mission, Agency of Charitable Organisations of the Protestant Church in Germany and Central Welfare Agency of the Jews in Germany) including their sub-divisions, facilities and institutes and other non-profit welfare associations, or

(...)

9. corporations, groups of persons and estates serving by their statutes, the act of foundation or the other constitution and in accordance with the actual business exclusively and directly charitable, non-profit and ecclesiastical purposes (sections 51 to 68 of the Ordinance on Dues). If an economic operation is maintained, the tax exemption shall be excluded to that degree. (...)

(...)

Section 9 Deductible Expenses

(1) Deductible expenses shall be also:

(...)

2. on reserve of section 8 subsection (3) expenses to promote charitable, ecclesiastical, religious (...) purposes and the non-profit purposes recognised as particularly worthy of promotion up to the amount of five percent of the total income amount or two thousandths of the total of the whole turnover and salaries and wages expended in the calendar year as special expenses. (...)

(...)

4. 1999 Turnover Tax Act (*Umsatzsteuergesetz - UStG*)

in the version of the proclamation of 9 June 1999 (Federal Law Gazette [BGBl.] Part I p. 595), last amended by Act of 20 December 2001 (BGBl. Part I p. 3794)

Section 4 Tax Exemption with Deliveries and Other Services

The following of the turnovers at section 1 subsection (1) No. 1 shall be tax-free:

(...)

18. services provided by officially-recognised independent welfare associations and corporations, groups of persons and estates serving independent welfare, which are linked to a welfare association as members if
 - a) these entrepreneurs exclusively and directly pursue non-profit, charitable or church ends,
 - b) performance directly benefits the group of persons favoured in accordance with the statutes, foundation or other constitution, and
 - c) the charges for the payments considered are less than the average charges for comparable services by commercial enterprises. Tax-free shall be also board and lodging and the usual benefits in kind granted by these entrepreneurs to persons active in the performance in accordance with the first sentence as emolument for the services provided;

(...)

27. a) appointment of members of clerical communities and members of central houses for non-profit, charitable, ecclesiastical or school purposes;

(...)

Section 4a Tax Refund

(1) Corporations which pursue exclusively and directly non-profit, charitable or ecclesiastical ends (sections 51 to 68 of the Ordinance on Dues) and legal entities under public law shall be granted on application a tax refund to compensate for the tax levied on them in respect of delivery to them of an item, its import or its intra-Community acquisition if the following preconditions are met:

1. The delivery, import or intra-Community acquisition of the item must have been liable to tax.
2. The tax incurred on delivering the item must have been stated separately in an invoice within the meaning of section 14 subsection (1) and paid for with the purchase price.
3. The tax owed for the import or intra-Community acquisition of the item must have been paid.
4. The item must have reached the third country territory.
5. The item must be used in the third country territory for humanitarian, charitable or educational purposes.
6. The acquisition or the importation of the item and its exportation may not have been effected by a corporation which pursues objectives enjoying favourable fiscal treatment, in connection with an economic business establishment and by a legal entity under public law in connection with a trade establishment (section 1 subsection (1) No. 6 and section 4 of the Corporation Tax Act) or by an agricultural and forestry establishment.

7. The above preconditions must be proven. The application shall be made in accordance with an officially prescribed form in which the applicant shall calculate the emolument to be paid him/herself.

Section 12 Tax Rates

- (1) The tax shall be for each turnover liable to tax sixteen percent of the assessment basis (section 10, section 11, section 25 subsection 3 and section 25a subsections (3) and (4)).
- (2) The tax shall be reduced to seven percent for the following turnovers
- (...)
8. a) performance by corporations which pursue exclusively and directly non-profit, charitable or ecclesiastical purposes (section 51 to section 68 of the Ordinance on Dues). This shall not apply to performance effected in connection with an economic business establishment,
- b) performance by associations of persons and communities with no legal capacity of the corporations referred to (a) first sentence if this performance as a whole would be taxed at a reduced rate if the corporations executed a portion of them themselves;

5. 1999 Trade Tax Act (*Gewerbesteuer*gesetz - *GewStG*)

of 1 December 1936 (Reich Law Gazette [RGBl.] Part I p. 979), in the version of the proclamation of 19 May 1999 (BGBl. Part I p. 1010, corr. p. 1491), last amended by Act of 20 December 2001 (BGBl. Part I p. 3794)

Part I: General Provisions

Section 3 Exemptions

The following shall be exempt from trade tax

(...)

6. corporations, associations of persons and estates which in accordance with their statutes, the act of foundation or the other constitution and in accordance with the actual management of business exclusively and directly pursue non-profit, charitable or ecclesiastical ends (sections 51 to 68 of the Ordinance on Dues). If an economic business establishment - with the exception of agriculture and forestry - is operated, the tax exemption shall be ruled out in this respect;

(...)

Part II: Assessment of the Trade Tax

Section 9 Reductions

The total of the profit and the additions shall be reduced by

(...)

5. the expenses paid from the funds of the economic establishment to promote charitable, ecclesiastical, religious, scientific or non-profit purposes recognised as particularly worthy of promotion within the meaning of the section 10 b subsection (1) of the Income Tax Act or of section 9 subsection (1) No. 2 of the Corporate Gains Tax Act up to a total of five percent of the profit from trade operations (section 7) increased by the additions in accordance with section 8 No. 9 or two thousandths of the total of the turnover and the wages and salaries spent in the economic year. (...)

**6. Act on Inheritance Tax and Gifts Tax
(Erbchaftsteuer- und Schenkungsteuergesetz - ErbStG)**

of 17 April 1974 (Federal Law Gazette [BGBl.] Part I p. 933), in the version of the proclamation of 27 February 1997 (BGBl. Part I 1997 p. 378), last amended by Act of 20 December 2001 (BGBl. Part I p. 3794)

Section 13 Tax Exemptions

(1) The following shall remain exempt from tax

(...)

13. allowances to pension and relief funds within the meaning of the section 5 subsection (1) No. 3 of the Corporate Gains Tax Act if they meet the preconditions for exemption from corporate gains tax. If a fund in accordance with section 6 of the Corporate Gains Tax Act is partly liable to tax, the allowance shall also be liable to tax in the same proportion. The exemption shall cease with effect for the past if the preconditions of section 5 subsection (1) No. 3 of the Corporate Gains Tax Act cease within ten years after the allowance;

(...)

16. allowances

- a) to domestic religious societies under public law or domestic Jewish congregations,
- b) to domestic corporations, associations of persons and estates which in accordance with their statutes, the act of foundation or the other constitution and in accordance with their actual business exclusively and directly pursue ecclesiastical, non-profit or charitable ends. The exemption shall cease with effect for the past if the preconditions for the recognition of the corporation, association of persons or estate as an ecclesiastical, non-profit or charitable institution fall away within ten years after the allowance and the assets do not flow to purposes which are afforded favourable treatment,
- c) to foreign religious societies, corporations, associations of persons and estates of the nature referred to in (a) and (b) on condition that the foreign state has granted a corresponding tax exemption for allowance to German entities of the type referred to in (a) and (b) and the Federal Ministry of Finance determines this by means of formal exchange of corresponding declarations with the foreign state;

17. allowances pursuing exclusively ecclesiastical, non-profit or charitable purposes if their use for the envisaged purposes is ensured;

(...)

7. Act on Real Property Tax (Grundsteuergesetz - GrStG)

of 7 August 1973 (Federal Law Gazette [BGBl.] Part I p. 965), last amended by Act of 19 December 2000 (BGBl. Part I p. 1790)

Section 3 Tax Exemption in Respect of Ownership of Real Property for Specific Entities⁵⁸

(1) The following shall be exempt from real property tax

(...)

4. real property used by a religious society which is a corporation under public law, one of its orders, one of its religious confraternities or one of its associations for purposes of religious instruction, science, instruction, education or for purposes of internal administration. Jewish congregations which are not corporations under public law shall be equal to religious societies;
5. official residences of clerics and church servants of religious societies which are corporations under public law and the Jewish congregations. Section 5 shall not apply in this respect;
6. real property of religious societies, which are corporations under public law, and Jewish congregations which belongs on 1.1.1987 and at the assessment time to a fund that is separate in accordance with canon law, in particular a job fund, the proceeds of which are intended exclusively for payment and pensions of clerics and church servants, as well as their surviving dependants. If in the territory named in article 3 of the Unification Treaty⁵⁹ the fact of the real property belonging to a special fund within the meaning of the first sentence did not pertain on 1.1.1987, it shall be sufficient in this respect for the real property to have belonged prior to 1.1.1987 to a special fund within the meaning of the first sentence. Sections 5 and 6 shall not apply in this respect. The real property must be exclusively allottable to the party using it for the favoured purpose, or to another favoured entity in accordance with Nos. 1 to 6.

Section 4 Other Tax Exemptions⁶⁰

Unless an exemption emerges in accordance with section 3, the following shall be exempt from real property tax

1. real property devoted to the religious service of a religious society which is a corporation under public law, or of a Jewish congregation;
2. burial grounds;

(...)

⁵⁸ Note: This tax exemption is restricted to ownership of real property used for residential purposes in accordance with section 5.

⁵⁹ Note: Article 3 of the Unification Treaty (Einigungsvertrag) of 31.8.1990 (Federal Law Gazette [BGBl.] Part II p. 889) names the following Länder: Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, as well as the Eastern part of Berlin, in other words the territory of the former GDR.

⁶⁰ Cf. note on section 3.

**8. Act on the Principles of Budgetary Law of the Federation and the Länder -
Budgetary Principles Act (Gesetz über die Grundsätze des Haushaltsrechts des Bundes und
der Länder - Haushaltsgrundsätzegesetz - HGrG)**

*of 19 August 1969 (Federal Law Gazette [BGBl.] Part I p. 1273), last amended by Act
of 20 December 2001 (BGBl. Part I p. 3955 and 3961)*

Section 55 Examination of Legal Entities under Public Law

(1) If a legal entity under public law which is not a territorial authority, municipal association, combination of territorial authorities or municipal associations or a religious society under public law in accordance with article 137 para 5 of the German Constitution of 11 August 1919 receives from the Federation or a Land subsidies the reason or amount of which is statutorily reasoned, or if a guarantee obligation of the Federation or of a Land is statutorily reasoned, the Federal or Land Court of Audit shall examine the budgetary and economic management of the legal entity. The same shall apply if the examination is provided for with the consent of a Court of Audit in the statutes. Other rights to examine reasoned in accordance with section 48 shall remain unaffected.

(...)

**9. Act on Collection of Church Taxes in the Land of North Rhine-Westphalia
(Gesetz über die Erhebung von Kirchensteuern im Land Nordrhein-Westfalen -
Kirchensteuergesetz - KiStG)**

*of 30 April 1962 (GV. NW p. 223) in the version of the proclamation of 22 April 1975 (GV NW
p. 438), last amended by Act of 6 March 2001 (GV NRW p. 103)*

Section 1 [Own Tax Regulations]

The Catholic Church and the Protestant Church shall levy church taxes in the Land of North Rhine-Westphalia on the basis of their own tax regulations.

Section 2 [Diocesan, Land and Local Church Taxes]

(1) Church taxes may be levied in accordance with the tax regulations

1. as diocesan church tax or Land Church tax
2. as local church tax,
3. simultaneously as diocesan church tax or Land Church tax and local church tax.

(2) The tax regulations shall be issued by the Dioceses of the Catholic Church and the Protestant Land Churches.

(3) The corporation competent in accordance with the tax regulations shall determine the amount of the church taxes to be levied.

Section 3 [Church Taxpayers]

(1) All members of the Catholic Church and the Protestant Church who are resident or have their habitual place of residence in the Land of North Rhine-Westphalia within the meaning of sections 8 and 9 of the Ordinance on Dues shall be liable to church tax.

(2) Liability to pay church tax shall terminate with resignation from the church declared in accordance with the valid state provisions on expiry of the calendar month in which the declaration of resignation from the church has become effective.

Section 4 [Collection]

(1) Church taxes may be levied

1. a) as a supplement to income tax and wage tax, also with setting minimum amounts, or
b) in accordance with income on the basis of a special tariff (church tax on income).
2. as a supplement to property tax (church tax on property),
3. as a supplement to the real property tax assessment amounts (church tax on real property),
4. as general church dues,
5. as special church dues by church taxpayers whose spouses are not liable to church tax.

(2) Prior to calculating the church tax in accordance with subsection (1) No. 1 (a) the income tax and wage tax shall be ascertained in accordance with section 51 a of the Income Tax Act in its version valid at the time. If for the special church dues in accordance with subsection (1) No. 5 the taxable income within the meaning of the Income Tax Act is taken as a basis for assessment, the amount shall be relevant which is to be taken as a basis for ascertaining the income tax in accordance with the first sentence.

(3) Church taxes in accordance with subsection (1) may be levied in parallel. Church taxes on income in accordance with subsection (1) No. 1 (a) and in accordance with subsection (1) No. 1 (b) cannot be levied in parallel.

(4) In the tax regulations it may be stipulated that church taxes of one type may be offset against church taxes of another type. A church tax in accordance with subsection (1) No. 1 (a) shall always be offset against a special church due in accordance with subsection (1) No. 5. Those contributions shall also be offset against special church dues which have been paid by the non-church-taxpayer spouse as a member of a public-law religious community which does not levy church tax.

(5) If the church tax on income is levied in parallel as Diocese church tax or Land Church tax and as local church tax, a joint tax rate shall be determined therefor.

Section 5 [Assessment]

(1) The provisions relating to income and wage tax, in particular the provisions regarding the pay deduction procedure, the provisions on real property tax and the provisions on property tax shall apply mutatis mutandis to the church taxes named in section 4 subsection (1) Nos. 1 to 3 and 5.

(2) If the liability to pay church tax does not pertain during the whole calendar year, for each calendar month in which the liability to pay church tax pertains, one twelfth each of the amount shall be levied which would result as annual tax liability if the liability to pay church tax were

to pertain for the whole year. This shall however not apply - on reserve of the third sentence - if the unrestricted liability to pay income tax begins or ends at the same time as the commencement or end of the liability to pay church tax during the calendar year. The first sentence shall also apply if in cases falling under section 2 subsection (7) third sentence of the Income Tax Act in an assessment to the unrestricted duty to pay income tax the domestic income made during the restricted duty to pay income tax has been included.

Section 6 [Inter-Confessional Marriages]

(1) If spouses belong to different churches entitled to levy taxes (inter-confessional marriages) and if the conditions apply for a joint income tax declaration (sections 26 and 26 b of the Income Tax Act) both churches shall levy the church tax in the form of the supplement to income and wage tax (section 4 subsection (1) No. 1 (a)) from both spouses as follows:

1. if the spouses declare income tax together, from half the income tax;
2. if one spouse or both spouses are liable to pay wage tax, from half the wage tax.

The spouses shall be jointly and severally liable. In the wage deduction procedure, the church tax shall be deducted from each spouse also for the other.

(2) If the conditions do not apply for a joint income tax assessment, or if the spouses are taxed separately (section 26a of the Income Tax Act) or specially (section 26c of the Income Tax Act), the church tax shall be levied from the income of each spouse in accordance with his/her church affiliation and with the tax assessment basis applying to them personally.

(3) Subsection (2) shall apply *mutatis mutandis* to collection of the other types of church tax named in section 4 subsection (1) - with the exception of the special church dues in accordance with section 4 subsection (1) No. 5.

Section 7 [Inter-Faith Marriages]

(1) If only one spouse belongs to a church entitled to levy taxes (inter-faith marriage), the church entitled to levy taxes shall levy the church tax in accordance with the tax assessment basis relating to that person.

(2) If the spouses are taxable together for income tax (section 26 b of the Income Tax Act), the church tax of the spouse liable to pay tax shall be proportionally calculated in the shape of the supplement to income tax. The church tax shall be calculated in accordance with the part of the joint income tax - to be calculated in accordance with section 4 subsection (2) first sentence - incurred by the spouse liable to pay tax if the joint tax in the ratio of the income tax amounts that would emerge in application of section 32 a subsections (1) to (3) of the Income Tax Act (income tax tariff) on the income of each spouse is distributed between the spouses.

Section 8 [Application of General Tax Statutes]

(1) The provisions of the Ordinance on Dues and of the Act on Service in Administrative Procedure (Verwaltungszustellungsgesetz) in their respectively applicable versions shall apply *mutatis mutandis* to church taxes unless a special regulation has been stipulated in this act.

(2) The provisions of the Fifth Part of the Ordinance on Dues (interest, delay penalties) and the provisions of the Eighth Part (provisions relating to criminal and administrative fines, criminal and administrative fine procedures) shall not be applicable.

(3) For the origination of the fiscal debt with church taxes on income, with general and with special church dues the provisions on the origination of the tax due with income tax shall apply; for the origination of the tax due with church taxes on property and on real property the provisions shall apply on the origination of the fiscal debt with property tax and real property tax.

(4) The churches shall be competent for respite and abatement of the church taxes. They may transfer power to these agencies in respect of the church taxes managed by the finance offices or by the municipalities (municipal associations).

Section 9 [Administration by Finance Offices]

On application of the Dioceses of the Catholic Church, or on application of the Protestant Land Churches, the ministry competent for the Land finance administration shall assign to the finance offices the administration of the church taxes on income and assets and of the special church dues. If the church tax on income is levied because of a special tariff or as special church dues, the obligation to transfer shall only pertain with regard to taxpayers liable to income or wage tax. In the other cases - with the exception of the general church dues - the administration of church tax may be assigned to the finance offices. Undertaking of administration shall be effected for an emolument that is to be agreed.

Section 10 [Payment of Church Tax]

(1) Where church tax on income is administrated by the finance offices, employers whose establishments are in the Land of North Rhine-Westphalia shall be obliged to collect the church tax from all Catholic and Protestant employees with residence or habitual place of residence within the meaning of sections 8 and 9 of the Ordinance on Dues in the Land of North Rhine-Westphalia in the amount of the relevant tax rate for the place of the establishment - within the meaning of the law on wage tax - and to pay it to the finance office competent for the employer.

(2) On application of Dioceses of the Catholic Church or on application of Protestant Land Churches whose area wholly or partly lies outside the Land of North Rhine-Westphalia, the ministry competent for the Land finance administration in agreement with the ministry competent for church matters may order the collection and payment of church tax using the wage deduction procedure also for those employees who are liable to pay tax to these churches who do not have their residence or habitual place of residence in the Land of North Rhine-Westphalia, but are paid by an establishment in the Land of North Rhine-Westphalia. If the tax rates at the place of residence are lower than at the establishment, the application shall only be approved if it is ensured that too much collected church tax will be refunded.

(3) If another tax rate applies to the residence or habitual place of residence of employees than to the place of the establishment, the finance office of the establishment in cases falling under subsection 2 may on application permit the employer to collect and pay the church tax of these employees in accordance with the tax rate applicable at the residence or habitual place of residence. The decision of the finance office shall require for its effectiveness the consent of the Diocese of the Catholic Church and the Protestant Land Church in whose area the employer maintains the establishment.

Section 11 [Administration by Municipalities]

The church tax on real property may on application of the corporation competent in accordance with the Ordinance on Dues be administrated by the municipalities (municipal associations). Administration shall be carried out for an emolument that is to be agreed.

Section 12 [Administration by Churches]

If the church tax is administrated by the churches themselves, the church tax including additional payment shall on application be collected by the finance offices in accordance with the provisions of the Ordinance on Dues or by the municipal law enforcement authorities where these collect the base tax, in accordance with the provisions of the administrative executory procedure.

Section 13 [Taxation Documents]

The competent Land or municipal authorities shall provide to the churches on request the documents required for taxation and for the church financial equalisation.

Section 14 [Objection and Legal Recourse]

(1) The taxpayer shall be entitled to file an objection to collection of church tax as an out-of-court legal recourse which shall be submitted within a period of one month from announcement of the tax notice to the agency stated in the Ordinance on Taxes. If the tax is collected by means of wage deduction, the objection shall be admissible until expiry of the calendar month following the wage payment period in which the deduction has been effected.

(2) The agency stated in the Ordinance on Taxes shall rule on the objection. The Seventh Part of the Ordinance on Dues shall apply mutatis mutandis to the procedure.

(3) The provisions of subsections (1) and (2) shall apply analogously in the event of the rejection of respite and abatement applications.

(4) Recourse to the Finance Courts shall be available in cases falling under subsections (1) and (3). The provisions of the Rules of Procedure of the Finance Courts in the version respectively applicable shall apply unless otherwise stipulated in this act.

(5) The participating authority (section 57 of the Rules of Procedure of the Finance Courts) is only the agency which in accordance with the Ordinance on Taxes is to decide on the objection (subsection (2)); section 122 subsection (2) of the Rules of Procedure of the Finance Courts shall remain unaffected.

(6) Demurs against the base tax (section 4 subsection (1) Nos. 1 to 3) shall be inadmissible. The same shall apply if the basis for assessment of the special church dues (section 4 subsection (1) No. 5) is the taxable income (section 4 subsection (2) second sentence).

Section 15 [Other Religious Communities]

(1) This act shall apply mutatis mutandis to religious communities which have the rights of a corporation under public law.

(2) The obligation to transfer the administration of church taxes to the finance offices within the meaning of the section 9 shall apply in this case only if

1. the religious community entitled to levy taxes has at least 40,000 members in the Land,

2. the religious community entitled to levy taxes collects the church tax in accordance with the same tax rates as the churches entitled to levy taxes, and
3. where there are religious communities with the same confession in the Land, these all collect taxes in accordance with uniform principles.

No. 1 shall not apply to religious communities for which the administration of church tax was assigned to the finance office on entry into force of the act of 5 November 1968.

Section 16 [State Recognition]

- (1) The church tax regulations and resolutions shall require state recognition.
- (2) If no recognised church tax resolution is available at the start of a fiscal year, the church tax resolution of the previous year shall continue to apply to the fiscal year until a new church tax resolution has been recognised.

Section 17 [Statement of Recognition]

- (1) Recognition in accordance with section 16 shall be stated by the ministry responsible for church matters and the ministry responsible for the Land finance administration unless otherwise determined in subsection (2).
- (2) If the church taxes are levied as local church taxes, the chief officials (Regierungspräsidenten) shall be competent for recognition of the church tax resolutions. Recognition of the individual church tax resolutions shall not be required if the ministry responsible for church matters and the ministry responsible for Land finance administration on application of the bishopric of the Catholic Church or on application of the Protestant Land Churches generally recognise the tax rates and the corporations responsible in accordance with the Ordinance on Taxes adopt these tax rates.

Section 18 [Implementation of this Act]

- (1) Executive ordinances relating to
 1. the period for which church tax is levied,
 2. the time when the administration of church taxes by the finance offices and the municipal fiscal authorities can be assumed or returned,
 3. the collection of church tax in the wage deduction procedure in accordance with section 10 subsection (2), and
 4. the procedure for recognition in accordance with sections 16 and 17 shall be issued by the ministry responsible for church matters and the ministry responsible for Land finance administration in agreement with the churches.
- (2) Executive ordinances governing the administration of church taxes, as well as the respite and the abatement of church taxes by the finance offices in accordance with section 9 and section 8 subsection (4), shall be issued by the ministry responsible for Land finance administration. Legal provisions governing the administration of church tax on real property and the respite and abatement of this church tax by the competent municipality or the competent municipal association in accordance with section 11 and section 8 subsection (4) shall be issued by the latter.

(3) The administrative provisions required to implement this act shall be issued by the ministry responsible for church matters and the ministry responsible for Land finance administration.

Section 19 [Final Provisions]

(1) This Act shall enter into force on 1 January 1963. At the same time, all provisions of the previous Land law on church taxes shall become invalid.

(...)

***10. Act Governing Resignation from the Churches, Religious Communities and Ideological Communities under Public Law [of North-Rhine Westphalia] (Gesetz zur Regelung des Austritts aus Kirchen, Religionsgemeinschaften und Weltanschauungsgemeinschaften des öffentlichen Rechts [von Nordrhein-Westfalen] - Kirchenaustrittsgesetz - KiAustrG)
of 26 May 1981 (GV NRW p. 260)***

Section 1 [Declaration of Resignation]

Resignation from a church or another religious or ideological community under public law with effect for the sphere of the state shall be effected by making a declaration to the Local Court in whose area the declarer has his/her residence, or lacking a residence habitual place of residence.

Section 2 [Age]

(1) Resignation may be declared by the person resigning if he/she has reached the age of 14 and is not incapable of entering into legal transactions.

(2) For children aged under 14 and for those who are incapable of entering into legal transactions, the legal representative with personal custody can declare the resignation. If the legal representative is a guardian or curator, he/she shall require the approval of the Guardianship Court therefor.

(3) If a child has reached the age of 12, his/her resignation may only be declared with his/her consent.

Section 3 [Provisions Relating to Form]

(1) The declaration of resignation may be given orally or in writing.

(2) The church, religious or ideological community from which the declarer wishes to resign must be clearly designated. Proof of affiliation shall not be required.

(3) The declaration of resignation shall state last name, first names, date and place of birth, residence and marital status.

(4) The declaration of resignation may not contain reservations, conditions or supplements.

(5) The oral declaration must be made for the record of the registrar of the competent Local Court. The written declaration must be submitted as an individual declaration in publicly-certified form.

(6) A declaration of resignation by an empowered representative shall be inadmissible.

Section 4 [Effectiveness]

- (1) With the effectiveness of the declaration of resignation, for the area of state law all and any rights and duties based on personal affiliation to the church, religious or ideological community shall be ceased.
- (2) The declaration of resignation shall become effective on expiry of the day on which the record of the declaration of resignation has been signed or on which the written declaration is received by the Local Court.
- (3) The end of the duty to pay church tax as a consequence of resignation from the church shall be governed by the Act on Collection of Church Taxes in the Land of North Rhine-Westphalia in the respectively applicable version.
- (4) Legal duties not based on personal affiliation to the church, religious or ideological community, in particular burdens for which particular plots of land are liable by reason of a specific legal title, shall remain unaffected by the declaration of resignation.

Section 5 [Resignation Certificate — Notices]

- (1) The Local Court shall issue the person resigning with a resignation certificate without delay after submission of the declaration of resignation. The certificate shall state when the declaration of resignation became effective.
- (2) The Local Court shall inform the church, religious or ideological community without delay by sending a certified copy of the declaration of resignation. It shall communicate resignation to the registration authority competent for the residence of the person resigning and the registrar keeping the family book or, if no family book has been established, the registrar who certified conclusion of marriage.

Section 6 [Exemption from Fees]

No fees or expenses shall be levied for the official acts of the Local Court.

Section 8 [Entry into Force]

- (1) This act shall enter into force two months after promulgation.
- (2) At the same time, the Act regarding Resignation from Churches and Religious Communities under Public Law (Gesetz betreffend den Austritt aus den Kirchen und Religionsgemeinschaften des öffentlichen Rechts (Prussian Law Collection [PrGS.] NW. p. 63)) of 30 November 1920 shall cease to apply.

N) Labour Law

1. Works Constitution Act (Betriebsverfassungsgesetz - BetrVG)

of 15 January 1972 (Federal Law Gazette [BGBl.] Part I p. 13), last amended by Act of 10 December 2001 (BGBl. Part I p. 3443)

Part Four: Participation and Co-Determination by Employees

Section 75 Principles for the Treatment of Persons Employed in the Establishment

(1) The employer and the works council shall ensure that every person employed in the establishment is treated in accordance with the principles of law and equity and in particular that there is no discrimination against persons on account of their descent, religion, nationality, origin, political or trade union activity or convictions or gender. They shall ensure that employees do not suffer any prejudice because they have exceeded a certain age.

(...)

Part Five: Special Provisions for Individual Types of Establishment

Section 118 Application to Enterprises Serving Special Purposes and Religious Communities

(1) The provisions of this act shall not apply to enterprises and establishments that directly and predominantly

1. pursue political, coalition, confessional, charitable, educational, scientific or artistic objectives; or

(...)

in so far as their application would not be in keeping with the specific nature of the enterprise or establishment. In such cases sections 106 to 110⁶¹ shall not apply and sections 111 to 113⁶² shall apply only in so far as they provide for the compensation or mitigation of employees for any financial prejudice sustained as a result of alterations in the establishment.

(2) This act shall not apply to religious communities or to their charitable and educational institutions irrespective of their legal form.⁶³

⁶¹ Note: These provisions govern informing employees of economic matters.

⁶² Note: These provisions concern questions of alterations in the establishment.

⁶³ Note: The Works Constitution Act relates, amongst other things, to the organisation of the works council, the works assembly, the general works council and the concern works council, as well as the appointment of youth and trainee representation and worker participation and co-determination.

2. Act on Employees Co-determination (Gesetz über die Mitbestimmung der Arbeitnehmer - Mitbestimmungsgesetz - MitbestG)

of 4 May 1976 (Federal Law Gazette [BGBl.] Part I p. 1153), last amended by Act of 23 July 2001 (BGBl. Part I p. 1852)

Section 1 Enterprises Covered

(...)

(4) This act shall not apply to enterprises that directly and predominantly

1. pursue political, coalition, confessional, charitable, educational, scientific or artistic objectives; or
2. serve purposes of reporting or expression of opinions to which article 5 para 1 second sentence of the Basic Law applies.

This act⁶⁴ shall not apply to religious communities or to their charitable and educational institutions, irrespective of their legal form⁶⁵.

3. Act on Representative Committees of Executive Employees (Gesetz über Sprecherausschüsse der leitenden Angestellten - Sprecherausschußgesetz - SprAuG)

of 20 December 1988 (Federal Law Gazette [BGBl.] Part I p. 2312), last amended by Act of 21 December 2000 (BGBl. Part I p. 1983)

Section 1 Establishment of Representative Committees

(...)

(3) This act shall not apply to

1. administrative bodies and establishments of the Federation, Länder, municipalities and other corporations, institutions and foundations under public law, as well as
2. religious communities and their charitable and educational institutions, irrespective of their legal form.

Section 27 Principles Regarding the Treatment of Executive Employees

(1) The employer and the representative committee shall ensure that all executive employees in the establishment are treated in accordance with the principles of law and equity, and

⁶⁴ Note: The Act on Employees Co-determination largely contains provisions relating to the organisation and the rights and duties of the board of directors and of the statutory representative body of enterprises.

⁶⁵ Note: Comparable provisions regarding the inapplicability of the act in question to churches and other religious communities are contained inter alia in section 1 of the Industrial Safety Law (Arbeitsschutzgesetz) of 7.8.1996 (BGBl. Part I p. 1246) last amended on 27.12.2000 (BGBl. Part I p. 2052), section 18 of the Continuation of Wage Payment Act (Lohnfortzahlungsgesetz) of 27.7.1969 (BGBl. Part I p. 946), last amended on 20.12.1996 (BGBl. Part I p. 2110), section 15 of the Workplace Act (Arbeitsplatzgesetz) in the new version of 14.02.2001 (BGBl. Part I p. 253)] and section 1 of the Holiday Pay Act (Urlaubsgeldgesetz) of 15.11.1977 (BGBl. Part I pp. 2117 and 2120), in the proclamation of 15.12.1998 (BGBl. Part I p. 3648), last amended on 30.11.2000 (BGBl. Part I p. 1638).

particularly that they are not subjected to discrimination based on descent, religion, nationality, origin, political or trade union activity or convictions or gender. They shall ensure that employees do not suffer any prejudice because they have exceeded a certain age.

(...)

4. Federal Act on Staff Representation (*Bundespersönalvertretungsgesetz - BPersVG*)
of 15 March 1974 (Federal Law Gazette [BGBl.] Part I. p. 693), last amended by Act
of 9 July 2001 (BGBl. Part I. p. 1510)

Part II: Staff Representative Bodies in the Länder

Section 105 [Equal Treatment of Employees]

Staff representative bodies, along with the head of department, shall ensure objective and just treatment of employees' concerns. In particular, no employee shall be given preferential treatment or suffer prejudice based on descent, religion, nationality, origin, political or trade union activity or convictions or gender or personal relationships. The head of department and the staff representative body shall refrain from all and any party political activity in the department; the handling of collective wage rates, salary and social matters shall not be affected hereby.

Part IV: Final Provisions

Section 112 [Application to Religious Communities]

This act⁶⁶ shall not apply to religious communities and their charitable and educational institutions, irrespective of their legal form; the independent adoption of staff representation regulations shall be left up to them.

5. Social Code (*Sozialgesetzbuch - SGB*) Third Book (III): Employment Promotion
of 24 March 1997 (Federal Law Gazette [BGBl.] Part I. p. 594), last amended by Act
of 20 December 2001 (BGBl. Part I. p. 401)

Chapter Two: Compulsory Insurance

Section 26 Other Compulsorily Insured Persons

(1) Persons subject to compulsory insurance are

(...)

⁶⁶ Note: This Act regulates the organisation, rights and duties, as well as the responsibilities, of staff representative bodies in Federal service, and lays down the basic conditions for the relevant Land law provisions relating to staff representative bodies in the Länder.

5. persons who are not regular members of clerical brotherhoods or similar religious confraternities and who receive out-of-school training for service in such a brotherhood or similar religious confraternity.

(...)

Section 27 Employees Exempt from Insurance

(1) Persons exempt from insurance shall be those employed as

(...)

2. clerics of religious communities that have been recognised as corporations under public law, if in case of illness they are entitled under the legal provisions or principles applicable to civil servants to continued payment of remuneration and allowances,
3. teachers employed as their main occupation in private approved schools, if in case of illness they are entitled under the legal provisions or principles applicable to civil servants to continued payment of remuneration and allowances,
4. statutory members of clerical brotherhoods, deaconesses and similar persons if they engage in sick-nursing, education or other non-profit work on predominantly religious or moral grounds and do not receive more than their free board and lodging or a small sum by way of remuneration that merely suffices to cover their direct needs in terms of accommodation, food, clothing and the like,

(...)

Chapter Three: Counselling and Placement

Section 36 Principles of Placement

(1) The employment office may not place persons if a training or employment relationship is to be established that violates a statute or is against good morals.

(2) The employment office may take into consideration limitations imposed by the employer on placement with regard to gender, age, state of health or nationality of the person seeking training or employment, or similar characteristics which as a rule do not pertain to vocational skills, only if these limitations are indispensable for the type of work to be performed. If the employer is a religious community, limitations on placement in that community and in its charitable and social institutions may furthermore be taken into account with regard to affiliation to a religious community. A limitation in respect of membership in a trade union, political party, religious community or comparable association may otherwise only be taken into consideration if

1. the training place or employment exists in an enterprise or establishment serving special purposes in terms of section 118 subsection 1 sentence 1 of the Works Constitution Act, and
2. the type of work to be performed justifies such a limitation.

(...)

Section 42 Limitation on the Right of Interrogation

The employment office may not collect data on persons seeking training or employment which an employer may not request prior to establishment of a training or employment relationship. Data on membership in a trade union, political party, religious community or comparable association may be collected only from the persons seeking training and employment. The employment office may only collect and use these data if

1. placement in a training place or employment is scheduled
 - a) in an enterprise or establishment serving special purposes in terms of section 118 subsection 1 sentence 1 of the Works Constitution Act, or
 - b) in a religious community or in one of its charitable or educational institutions,
2. the person seeking training or employment is willing to be placed in such a training place or employment, and
3. in a placement made pursuant to No. 1 (a) the type of work to be performed justifies the limitation.

Chapter Four: Employee Benefits

Section 135 Special Consideration in Other Compulsory Insurance Relationships

The basic consideration shall be

(...)

6. in periods in which insurance was compulsory because of out-of-school training of non-statutory members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity, the consideration on which the assessment of contributions was based.

Section 136 Consideration for Performance

(1) Consideration for performance rendered shall be the assessment payment reduced by the statutory deductions from compensation normally arising for employees.

(2) Deductions from payment shall be taxes, contributions to social security insurance and employment promotion, as well as other normally arising deductions of relevance at the beginning of the calendar year, to the extent that the second sentence Nos. 2 and 3 state no derogations. In this regard, the basis shall be

(...)

2. for the church tax, the tax assessed according to the lowest rate of assessment for church tax effective in the Länder in the previous year,

(...)

Chapter Ten: Funding

Section 345 Contributory Earnings of Other Persons Subject to Compulsory Insurance

Contributory earnings shall be,

(...)

4. as to persons who have received out-of-school training as non-statutory members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity, the consideration amounting to the given benefits in cash and remuneration in kind,

(...)

Section 347 Payment of Contributions for Other Insured Persons

Contributions shall be paid

(...)

4. by the religious community or similar religious society for non-statutory members of clerical brotherhoods or similar religious confraternities during the period of their out-of-school training for service in such a brotherhood or similar religious confraternity,

(...)

6. Working Hours Act (*Arbeitszeitgesetz - ArbZG*)

of 6 June 1994 (Federal Law Gazette [BGBl.] Part I. p. 1170), last amended by Act of 21 December 2000 (BGBl. Part I. p. 1983)

Part One: General Provisions

Section 1 Purpose of the Act

The purpose of the act shall be,

1. to guarantee the safety and health protection of employees in the setting of working hours and to improve the basic conditions for flexible working hours, as well as
2. to protect Sundays and state-recognised holidays as restful and spiritually-edifying periods for employees.

Part Two: Weekday Working Hours and Time Off

Section 7 Derogating Regulations

(...)

(4) The churches and public-law religious communities may provide in their regulations for the derogations⁶⁷ stated at subsections 1 and 2.

(...)

⁶⁷ Note: The derogations referred to concern possible modifications of weekday working hours.

Part Three: Work Ban on Sundays and Holidays

Section 9 Work Ban on Sundays and Legal Holidays

- (1) Employees may not work on Sundays and legal holidays from midnight to midnight.
- (2) In multi-shift businesses with regular day and night shifts the beginning or end of the Sunday or holiday rest period may be put ahead or back by up to six hours if no business is conducted in the 24 hours following the beginning of the rest period.
- (3) For drivers and passengers, the beginning of the 24-hour Sunday and holiday rest period may be brought forward by up to two hours.

Section 10 Employment on Sunday and Legal Holidays

- (1) To the extent that work cannot be performed on weekdays, notwithstanding section 9 employees may work on Sundays and legal holidays
- (...)
6. in the case of non-commercial activities and events of the churches, religious societies, associations, clubs, political parties and other similar organisations,
- (...)

Section 13 Authorisation, Order, Allowance

- (...)
- (3) The supervising authority may
 1. determine whether employment is permissible in accordance with section 10,
 - (...)and give orders relating to the hours of employment with regard to the time set for public religious service.
- (...)

Part Six: Special Provisions

Section 18 Non-Application of the Act

- (1) This act shall not apply to
- (...)
4. the liturgical purview of the churches and religious communities.
- (...)

7. Vocational Training Act (*Berufsbildungsgesetz - BBiG*)
*of 14 August 1969 (Federal Law Gazette [BGBl.] Part I. p. 1112), last amended by Act
of 10 December 2001 (BGBl. Part I. p. 2992)*

Part Six: Special Provisions for Certain Economic Sectors and Occupations

Part Four: Vocational Training in the Public Service

Section 84 Competent Body

(1) In the public service the supreme Federal authority shall determine for the Federation the competent body for its sphere of competence

1. in cases falling under sections 23, 24 and 45, as well as sections 23a, 24 and 41a of the Craftwork Ordinance (Handwerksordnung),
2. for vocational training in trainee occupations other than those covered by sections 73 to 75, 79, 87, 89, 91 and 93;

this shall also apply to the corporations, institutions and foundations under public law which are subject to supervision on the part of the Federation; the Länder shall determine the competent body for their sphere of competence as well as for the municipalities, the municipal associations and for the other corporations, institutions and foundations under public law which are subject to supervision on the part of the Länder.

(2) Subsection 1 shall apply mutatis mutandis to trainee occupations in which training is provided in accordance with the training directives of the public service within the purview of the churches and other religious communities under public law or outside the public service.

(...)

Section 84a Competent Body for the Purview of the Churches and Other Religious Communities under Public Law

The churches and other religious communities under public law shall determine for their purview the competent body for vocational training with regard to training occupations other than those listed in sections 73 to 75, 79, 84, 89, 91 and 93.

8. Juvenile Workers Protection Act (*Gesetz zum Schutze der arbeitenden Jugend - Jugendarbeitsschutzgesetz - JArbSchG*)
*of 12 April 1976 (Federal Law Gazette [BGBl.] Part I. p. 965), last amended by Act
of 21 December 2000 (BGBl. Part I. p. 1983)*

Part Three: Employment of Juveniles

Section 17 Rest on Sunday

(1) Juveniles may not be employed on Sundays.

- (2) The employment of juveniles on Sundays shall be permissible only
1. in hospitals, old people's homes, nursing homes, and children's homes,
- (...)

Section 18 Rest on Legal Holidays

- (1) Juveniles may not be employed on 24 and 31 December after 2 p.m. and on legal holidays.
- (2) In cases falling under section 17 subsection 2, except for 25 December, 1 January, the first Easter holiday, and 1 May, the employment of juveniles shall be permissible on legal holidays.
- (...)

9. Act on the Promotion of Early Retirement Benefits
(Gesetz zur Förderung von Vorruhestandsleistungen - Vorruhestandsgesetz - VRG)
*of 13 April 1984 (Federal Law Gazette [BGBl.] Part I. p. 601), last amended by Act
of 5 October 1994 (Part I. pp. 2911 and 2950)*

Section 1 Basic Principle

- (1) The Federal Institution for Labour (Bundesanstalt für Arbeit) shall grant allowances to employers towards the costs of early retirement benefits for employees who have reached the age of 58 and have ended their gainful employment.
- (...)

Section 2 Eligibility Requirements

- (1) The eligibility requirements for a subsidy shall be that
1. the employer has, on the basis of a collective agreement, an arrangement of the churches and public-law religious societies or an agreement with the employee
 - a) paid to the retired employee early retirement benefits amounting to at least 65 per cent of gross pay in terms of section 3 subsection 2, and
 - b) must pay early retirement benefits until the end of the calendar month in which the retired employee has reached the age of 65, at the latest until the end of the calendar month preceding the month as of which the retired employee may claim old-age pension before reaching the age of 65, settlements under the miners' pension insurance scheme, or similar benefits under public law,
- (...)

O) Data Protection

1. Federal Data Protection Act (*Bundesdatenschutzgesetz - BDSG*)

of 20 December 1990 (Federal Law Gazette [BGBl.] Part I p. 2954), last amended by Act of 20 December 2001 (BGBl. Part I p. 3926)

Section 15 Transmission of Data to Public Bodies

(1) The transmission of personal data to public bodies shall be permissible if

1. this is necessary for the performance of duties of the transmitting body or the third party to which the data are transmitted and
2. the requirements are met which would permit use in accordance with section 14.

(2) Responsibility for the permissibility of transmission shall rest with the transmitting body. If the data are transmitted at the request of the third party to which the data are transmitted the latter shall bear responsibility. In such case the transmitting body shall merely examine whether the request for transmission lies within the scope of the duties of the third party to which the data are transmitted unless there is special reason to examine the permissibility of transmission. Section 10 subsection 4 shall remain unaffected.

(3) The third party to which the data are transmitted may process or use them for the purpose for which they are transmitted. Processing or use for other purposes shall be permissible only if the requirements of section 14 subsection 2 of this act are met.

(4) Subsections 1 to 3 above shall apply mutatis mutandis to the transmission of personal data to bodies of public-law religious societies, provided it is ensured that adequate data protection precautions are taken by them.

(...)

2. Act on the Protection of Citizens' Personal Data [of Saxony-Anhalt] (*Gesetz zum Schutz personenbezogener Daten der Bürger [von Sachsen-Anhalt] - DSG-LSA*)

of 12 March 1992 (Law and Ordinance Gazette [GVBl.] of Saxony-Anhalt p. 152), last amended by Act of 18 February 2002 (GVBl. of Saxony-Anhalt p. 54)

Part Two: Legal Basis of the Collection, Processing and Use of Data

Section 11 Data Transmission to Public Bodies

(...)

(4) Subsections 1 to 3 shall apply mutatis mutandis⁶⁸ to the transmission of personal data to bodies of the public-law religious societies if it is ensured that the recipient has taken sufficient

⁶⁸ Note: Subsections 1 to 3 largely make the following provision: Transmission of personal data is on principle permissible if it is necessary in order to carry out tasks within the competence of the transmitting body or of the

data protection precautions. The determination of this shall be taken by the transmitting body unless it has been carried out in general by the Ministry of the Interior.

(...)

3. Registration Law Framework Act (*Melderechtsrahmengesetz - MRRG*)
of 16 August 1980 (Federal Law Gazette [BGBl.] Part I p. 1429), in the version of the proclamation of 19 April 2002 (BGBl. Part I p. 1342)

Section 1 Duties and Powers of the Registration Authorities

(1) The authorities of the Länder that are competent for registration (registration authorities) shall register the persons (residents) resident in their area of competence in order to be able to determine and prove their identity and places of residence. They shall issue information from registration registers, assist in the implementation of tasks of other authorities or other public bodies and shall transmit data. In carrying out their tasks, the registration authorities shall maintain registration registers. These contain data collected from those affected, from authorities and other public bodies or which otherwise become officially known.

(2) The registration authorities may process or use personal data stored in the registration register only in accordance with this act or other legal provisions. Data from residents not obliged to register, may be collected, processed and used on the basis of a consent according to the provisions of the data protection law of the respective Land.

Section 2 Storage of Data

(1) In carrying out their tasks according to section 1 subsection 1 sentence 1 and 2, the registration authorities shall store the following data on residents in the registration register, including the indications necessary to prove their accuracy:(...)

11. legal affiliation to a religious society,

(...)

Section 4 Data Collection

(1) Land law shall determine which of the data which may be stored by the registration authorities in accordance with section 2 are collected as a result of the registration or deregistration or change of residential status of a resident.

(...)

Section 4a Correctness and Completeness of the Registration Register

(1) If the registration register is incorrect or incomplete, the registration authority shall correct or supplement it (continuation) ex officio. Without delay, the authorities or other public bodies

recipient, and it takes place for the purposes for which the data have been collected. The recipient may on principle only process or use the data transmitted for the purpose for which they were transmitted to him/her ; storage, alteration or use for other purposes is only permissible under certain preconditions (cf. section 10 subsection 2).

shall be informed of continuation to which incorrect or incomplete data have been transmitted in regular data transmission.

(...)

(3) The bodies named in subsection 1 second sentence, if they do not carry out tasks of the official statistics and are not public-law religious societies, shall notify the registration authorities without delay if they have concrete indications of the incorrectness or incompleteness of data transmitted. Other public bodies to which registration data have been transmitted at their request may notify the registration authorities in the event of the existence of such indications. Subsection 2 shall remain unaffected. Statutory duties of confidentiality, in particular tax secrecy in accordance with section 30 of the Due Ordinance, and professional or special official secrecy, shall not oppose notification in accordance with the first and second sentences if it is limited to stating that concrete indications exist for the incorrectness or incompleteness of data that have been transmitted.

(...)

Section 17 Data Transmission between the Registration Authorities

(1) If a resident has registered with a registration authority, the latter shall instruct the previously competent registration authority and the registration authorities competent for other residences of this by transmitting the data of the person affected, that are named in section 2 subsection 1 Nos. 1 to 18 (feedback). (...) The previously competent registration authority shall instruct the registration authority in the new place of residence of the facts named in section 2 subsection 2 Nos. 1, 3 and 4, as well as in cases where the data referred to in the first sentence deviate from the information previously given. Where registration authorities of the same Land are involved, further provisions may be made for data transmission by virtue of Land law.

(2) If the data referred to in section 2 subsection 1 are continued, the registration authorities which are responsible for further residences of the resident shall be instructed if the data are needed to carry out their tasks.

Section 18 Data Transmissions to Other Authorities or Other Public Bodies

(1) The registration authority may transmit to another authority or other public agency in the inland the following data of residents from the registration register if they are needed to carry out their competence or tasks lying in the competence of the recipient.

(...)

5. religious names/artistic names,

(...)

Section 19 Data Transmission to Public-Law Religious Societies

(1) The registration authority may transmit to a public-law religious society under the preconditions named in section 18 subsection 1 to carry out its tasks the following data on its members:

1. last names,
2. previous names,

3. first names,
4. doctor's degree,
5. religious names/artistic names,
6. date and place of birth,
7. gender,
8. nationalities,
9. present and last previous address, main and secondary residence, if moving in from abroad the last previous address in the inland as well
10. date of moving in and out,
11. civil status, restricted to the statement of whether married, leading a life partnership or not; in addition concerning married persons or life partners: date of marriage or establishment of the life partnership,
12. number of minor age children,
13. transmission barriers,
14. date and place of death.

(2) The registration authority may transmit from family members of the members who do not belong to the same or to any public-law religious society the following data:

1. last names,
2. first names,
3. date of birth,
4. affiliation to a public-law religious society,
5. transmission barriers
6. date of death.

Family members for the purpose of sentence 1 are the spouse, minor age children and the parents of minor age children. It may be determined by virtue of a Land statute that more of the data referred to in subsection 1 may be transmitted. The person affected may require his/her data not to be transmitted; he/she shall be informed of this on registering in accordance with section 11 subsection 1. The fourth sentence shall not apply if it has been determined by virtue of Land law that for purposes of the law on levying taxes of the respective public-law religious society data are to be transmitted thereto.

(3) Data transmission in accordance with subsections 1 and 2 shall only be permissible if it is ensured that the data recipient has taken sufficient data protection precautions. Further details shall be determined by Land law⁶⁹.

⁶⁹ Cf. on this by way of example the excerpts from the Registration Act of the Land of Saxony-Anhalt (Meldegesetz des Landes Sachsen-Anhalt) below.

**4. Registration Act of the Land of Saxony-Anhalt
(Meldegesetz des Landes Sachsen-Anhalt - MG LSA)**

of 18 September 1992 (Law and Ordinance Gazette [GVBl.] of the Land of Saxony-Anhalt p. 682), in the version of the proclamation of 1 March 1996 (GVBl. of the Land of Saxony-Anhalt p. 122), last amended by Act of 19 March 2002 (GVBl. of the Land of Saxony-Anhalt p. 130)

Part III: Registration Register

Section 22 Storage of Data

(1) In carrying out their tasks, the registration authorities store the following data on residents in the registration register, including the indications necessary to prove their accuracy:

(...)

11. legal affiliation to a religious society,

(...)

(2) Over and above the data named in subsection 1, the registration authorities shall store the following data in the registration register, including the indications necessary to prove their accuracy:

(...)

6. for the issuance of a wage tax card:

fiscal data (tax class, tax-free allowances, religious affiliation of the spouse, legal status and allocation of the children, first and last names, as well as address of the foster and step parents),

(...)

Section 24 Classification Aid

(1) The registration authorities may maintain the registration registers with the aid of classification aids. (...)

(2) Classification aids may not be transmitted other than to public-law religious societies.

Part Four: Data Transmission

Section 28 Data Transmission between the Registration Authorities

(1) If a resident has registered with a registration authority, the latter shall instruct the previously competent registration authority and the registration authorities competent for other residences of this without delay, not later than within a week by transmitting the following data on the resident (feedback):

(...)

4. affiliation to a public-law religious society,

(...)

Section 30 Data Transmission to Public-Law Religious Societies

(1) The registration authority may transmit to a public-law religious society in order to carry out its tasks the following data on its members from the registration register:

1. classification aid,
2. first and last names,
3. previous names,
4. doctor's degree,
5. religious names/artistic names,
6. date and place of birth,
7. gender,
8. nationalities,
9. present and last previous and future addresses, main and secondary residence, date of moving in and out,
10. civil status, restricted to the statement of whether married or not; additionally with married persons: date of conclusion of marriage,
11. number of minor-age children,
12. transmission barriers, and
13. date and place of death.

(2) It must be ensured in transmission that the third party, to which the data are transmitted, has taken sufficient data protection precautions. The determination of this shall be made by the storing body unless it has been carried out in general by the Ministry of the Interior.

Section 32 Regular Data Transmission

The Ministry of the Interior shall be empowered to permit or prescribe regular data transmission from the registration authority to public bodies, public-law religious societies and the search service by means of an ordinance if the transmissions are necessary in order to carry out tasks for which the third party, to which is transmitted, is competent. In the ordinance, the reason for and purpose of the transmission, the data to be transmitted and the third party, to which is transmitted, shall be established; in addition, the form and procedure of transmission may be regulated.

P) Religion and Religious Communities in General Legal Relations

1. Law on Aliens:

Act on the Entry and Residence of Aliens on Federal Territory - Aliens Act (Gesetz über die Einreise und den Aufenthalt von Ausländern auf dem Bundesgebiet - Ausländergesetz - AuslG)

*of 9 July 1990 (Federal Law Gazette [BGBl.] Part I p. 1354), last amended by Act
of 9 January 2002 (BGBl. Part I. p. 361)*

Section 37 Prohibition and Restriction of Political Activity

(...)

(2) The political activity of an alien shall be prohibited as far as it t

(...)

2. publicly supports or advocates, or is intended or likely to cause the use of force as a means to implement political, religious or other concerns, or

(...)

Section 51 Prohibition of the Extradition of Political Persecutee

(1) An alien may not be extradited to a state in which his/her life or freedom is threatened because of his/her race, religion, nationality, his/her membership of a specific social group or because of his/her political conviction.

(...)

(3) Subsection 1 shall not apply if the alien for serious reasons is to be regarded as a danger to the security of the Federal Republic of Germany or constitutes a danger to the general public because he/she has been sentenced because of a crime or particularly serious offence with legal force to at least three years' imprisonment. The same applies if for serious reasons the assumption is justified, that the alien has committed a crime against peace, a war crime or a crime against humanity in terms of the international treaties, which have been elaborated, in order to create regulations regarding these crimes, or that he committed a grave, non political crime outside of the Federal Republic of Germany before his reception as refugee, or that he bears the blame for acts, contrary to the objectives and principles of the United Nations.

2. Traffic Law:

Ordinance on the Operation of Transport Enterprises in Local Public Passenger Transport (Verordnung über den Betrieb von Kraftfahrunternehmen im Personennahverkehr - BOKraft)

*of 21 June 1975 (Federal Law Gazette [BGBl.] Part I p. 1573), in the version of
30 June 1989 (BGBl. Part I p. 1273), last amended by Ordinance of 26 May 1998
(BGBl. Part I p. 1195)*

Section 26 Labelling

(...)

(4) Third party advertising on taxis and hire cars shall only be permissible on the side doors of the vehicle. Political and religious advertising on taxis shall be prohibited.

3. Law on Foundations:

Act on Foundations under Civil Law with Legal Capacity [of Schleswig-Holstein] - Foundations Act (Gesetz über rechtsfähige Stiftungen des bürgerlichen Rechts [von Schleswig-Holstein] - Stiftungsgesetz - StiftG)

*of 13 July 1972 (Law and Ordinance Gazette of Schleswig-Holstein [GVOBl.] p. 123),
in the version of 2 March 2000 (GVOBl. Schl.-H. p. 208)*

Section 1 Definitions

Foundations within the meaning of this act shall be foundations under civil law with legal capacity (sections 80 to 88 of the Civil Code [Bürgerliches Gesetzbuch - BGB]) with their registered seat in the Land of Schleswig-Holstein.

Section 7 Accession to Property

(1) If the act of foundation or the statutes for the event of dissolution or abolition of a foundation contain no provisions regarding the use of the property, the property, including obligations, shall fall

(...)

2. of a church foundation (section 18) to the church carrying out supervision,

(...)

If there is no remainderman in terms of the first sentence No. 2, the finance authorities shall accede to the property.

Section 18 Church Foundations

(1) Church foundations shall be foundations exclusively or predominantly serving ecclesiastical purposes and which are

1. organisationally linked to a church, or

2. subjected to church supervision in the foundation's statutes, or
3. can only sensibly fulfil their purposes in connection with a church.

Church foundations shall require recognition by the competent church authority prior to approval.

(2) In the case of measures related to church foundations, the authority competent in accordance with this act shall come to an understanding with the competent church authority. In the event of amendments to the statutes that change the objectives of the foundation, as well as with combinations, dissolutions and abolitions of church foundations, additionally the consent of the Ministry of Education, Science, Research and Culture shall be required.

(3) Subsections 1 and 2, as well as section 7 subsection 1 first sentence No. 2 and the second sentence and subsection 2, shall apply mutatis mutandis to foundations of the religious societies and ideological associations which are corporations under public law.

4. Law Relating to Holidays:

a) Act on Sundays and Holidays [of Bremen] (Gesetz über die Sonn- und Feiertage [von Bremen])

of 12 November 1954 (Bremen Law Gazette [GBl.], p. 115), last amended by proclamation of 27 June 2000 (GBl. Brem. pp. 237 (238))

Section 1

(1) Sundays, state-recognised holidays and church holidays shall be protected in accordance with this act.

(2) Such protection shall apply from 0.00 to 24.00 unless otherwise determined with regard to its duration.

Part I: Sundays and State-Recognised Holidays

Section 2

(1) State-recognised holidays shall be:

- a) New Year's Day,
- b) Good Friday,
- c) Easter Monday,
- d) 1 May,
- e) Ascension Day,
- f) Whit Monday,
- g) 3 October - Day of German Unity,
- h) Christmas Day, and

i) Boxing Day.

(2) These days shall be high days, general or legal holidays and general public rest days in terms of the provisions of Federal or Land law, in particular also in accordance with the Federal Act Governing Wage Payment on Holidays (Bundesgesetz zur Regelung der Lohnzahlung an Feiertagen) of 2 August 1951 (BGBl. Part I p. 479).

Section 3

Sundays and state-recognised holidays shall be days of general rest from work.

Section 4

(1) Publicly-observable work disturbing the external peace or contrary to the spirit of Sundays and holidays shall be prohibited.

(2) Those acts shall be exempt from the prohibition in accordance with subsection 1 which are particularly permitted by Federal or Land laws or listed below:

(...)

c) non-commercial light work in house and garden, unless causing a direct disturbance to religious services.

(3) The local police authorities may permit the organisation of markets not determined in accordance with sections 68 or 69 of the Industrial Code (Gewerbeordnung) or events similar to markets, in particular flea markets, if these predominantly serve the purposes of leisure and the organiser ensures that no commercial providers participate. The issuance of permission shall be impossible if the event may cause a direct disturbance to religious services. Permission may be provided with instructions and conditions; it may be revoked if the preconditions for its issuance no longer apply.

Section 5

(1) On the days named in section 3 during the period from 7.00 to 11.00 a.m., the following events and activities shall be prohibited unless particularly permitted in accordance with Federal law or allowed in accordance with Land law and not postponable:

- a) public open air assemblies and public processions not connected to religious services;
- b) events for entertainment or pleasure where there is no higher interest of art, science or popular education;
- c) sports, athletic and similar commercial events;
- d) events and activities causing a direct disturbance to religious services.

The basic right of freedom of assembly (article 8 para 2 of the Basic Law) shall be restricted in this sense.

(2) The restrictions of subsection 1 shall not apply to 1 May and 3 October.

Section 6

(1) The following shall be prohibited on Good Friday, National Remembrance Day and on the Sunday in commemoration of the dead (last Sunday before the first Advent Sunday):

- a) events on premises where alcohol is sold going beyond the sale of alcohol and food;
- b) sports, athletic and similar commercial events;
- c) sports, athletic and similar events of a non-commercial nature where they are linked to parades and processions, with entertaining music or festive events;
- d) all other public events where the serious nature of such days is not retained.

The prohibitions shall apply on National Remembrance Day, the Day of Prayer and Repentance and on the Sunday in commemoration of the dead from 4 a.m. to 5 p.m., on Good Friday from 4 a.m. to 4 a.m. of the following day.

Section II: Church Holidays

Section 8

No events and activities causing a direct disturbance to religious services on the following church holidays shall be permitted close to buildings and premises used for religious services of the respective confession:

- a) on 31 October - Reformation Day - (Protestant holiday);
- b) on Thursday after Trinity Sunday - Corpus Christi - (Catholic holiday);
- c) on 1 November - All Saints - (Catholic holiday);
- d) on Day of Prayer and Repentance (Protestant holiday).

Section 9

Members of the religious societies in employment or training shall be afforded the opportunity to attend a religious service on the holidays of their confession named in section 8 unless this is opposed by operational necessities.

Section 10

(1) Pupils of the general schools, as well as professional schools, and vocational schools, shall have no lessons on the holidays of their religious societies named in section 8. The pupils of the training schools shall be released from instruction on application.

(2) The supreme Land authority responsible for matters concerned with cultural matters and school affairs shall be empowered to grant an exemption from instruction on holidays other than those named in section 8.

Part III: Final Provisions

Section 11

The Senator for Home Affairs, Culture and Sport may in individual cases grant an exemption from the restrictions and prohibitions provided for in this act for important reasons.

Section 12

The Senate shall be empowered:

- a) to set the date on which National Remembrance Day takes place;
- b) for special reasons in individual cases to declare the provisions of this act fully or partly applicable also on days not named in section 3.

b) Act on Shop Closing Times (Gesetz über den Ladenschluß)

of 28 November 1956 (Federal Law Gazette [BGBl.] Part I p. 875), last amended by Act of 21 December 2000 (BGBl. Part I p. 1983)

Part II: Shop Closing Times

Section 3 General Shop Closing Times⁷⁰

(1) sales outlets must be closed at the following times for business with customers:

- on Sundays⁷¹ and holidays,

(...)

- on the four consecutive Saturdays before 24 December until 6 a.m. and from 6 p.m.,

- on 24 December if this day falls on a weekday, until 6 a.m. and from 2 p.m.

(...)

Section 12 Sale of Specific Goods on Sundays

(...)

(2) In the statutory rules and orders⁷² issued in accordance with subsection 1, opening on specific Sundays and holidays or seasons can be restricted, as well as for specific types of sales outlets. Opening on Boxing Day, as well as on the second days of Easter and Whitsun holidays, should not be permitted. The position of the opening times that are permitted shall be determined by statutory orders issued by the Land Governments or the bodies they appoint taking account of the time of the main religious service.

⁷⁰ Note: Exceptions apply to specific shops and branches, such as in accordance with sections 4, 5, 6, 8, 9 and 10 to chemists, petrol stations, sales outlets at passenger railway stations and airports, to the sale of newspapers and periodicals and for spa and recreation venues. Furthermore, for instance sections 18a and 19 contain special provisions for market transport and for the sale of flowers at cemeteries.

⁷¹ Note: Special provisions for sale on Sundays can be found inter alia in sections 14 and 15 for so-called sale Sundays and for sale on 24 December when it falls on a Sunday.

⁷² Note: These ordinances refer to the sale of milk and dairy products, bakery and pastry products, fresh fruit, flowers and newspapers.

5. Animal Protection:

Animal Protection Act (Tierschutzgesetz)

of 24 July 1972 (Federal Law Gazette [BGBl.] Part I p. 1277), in the version of the proclamation of 25 May 1998 (Federal Law Gazette [BGBl.] Part I p. 1105, corr. p. 1818), last amended by Act of 29 October 2001 (BGBl. Part I p. 2785)

Section 4a [Killing of Warm-Blooded Animals]

(1) A warm-blooded animal may only be slaughtered if it has been anaesthetised prior to the removal of blood.

(2) Deviating from subsection 1, no anaesthetic shall be required if

(...)

the competent authority has issued exceptional permit for slaughtering without anaesthetic (slaughtering according religious rites); it may only issue exceptional permit in so far as is necessary in order to meet the needs of members of specific religious communities in the area of application of this act who are required by binding provisions of their religious community to slaughter according to religious rites or who are enjoined by them from eating of meat from animals not slaughtered according to religious rites, or

(...)

6. Law on Collections:

Act on Collections [of Berlin] (Sammlungsgesetz)

of 22 February 1967 (Law and Ordinance Gazette [GVBl.] of Berlin p. 362), in the version of 23 January 1973 (GVBl. of Berlin p. 394), last amended by Act of 16 July 2001 (GVBl. of Berlin p. 260 and 263)

Section 1 Collections Requiring Permission

(1) Whosoever wishes to organise a collection of money or of material donations or benefits having monetary value by direct person-to-person influence

a) on streets, on squares, in public houses or restaurants, in accommodation businesses or on other premises accessible to all (street collections),

b) from door to door, in particular with collection lists (house collections)

shall require permission.

(...)

(3) Collections carried out by an association among its members or another organiser within a group of individuals linked with him/her by personal relations shall not require permission.

(4) Collections carried out in spatial or chronological connection with an assembly or another event in closed rooms among the participants in the event shall not require permission.

Section 8 Participation of Children and Juveniles

(1) Children under the age of fourteen may not be involved in collections. This shall not apply to collections by the churches, religious communities and ideological associations in accordance with section 11 No. 1 (a) and No. 2 (a).

(2) Juveniles between the age of fourteen and eighteen may only participate in street collections, and only until the onset of darkness; the competent authority may permit exceptions in individual cases if no danger to the juveniles is to be feared.

Section 11 Collections by the Churches, Religious Communities and ideological associations

This act shall not apply with the exception of section 8 to

1. collections by the churches, religious communities and ideological associations
 - a) in churches and on other premises serving religious services or to foster the philosophy,
 - b) in the shape of house collections among their members.
2. collections by the churches, religious communities and ideological associations under public law
 - a) in churches and on other premises serving religious services or to foster the philosophy,
 - b) in the shape of house collections among their members,
 - c) in forecourts of churches or on other land belonging to the churches, religious communities or ideological associations,
 - d) in a local context with church, religious or ideological events.

7. Law on Insurance:

- a) Social Code (Sozialgesetzbuch - SGB) Fifth Book (V): National Health Insurance of 20 December 1988 (Federal Law Gazette [BGBl.] Part I pp. 2477 and 2482), last amended by Act of 15 February 2002 (BGBl. Part I p. 684)***

Chapter I: General Provisions

Section 2 Services

(...)

(3) In selecting the service-provider, their diversity shall be observed. The religious needs of the insured parties shall be accommodated.

(...)

Chapter II: Group of Insured Persons

Section 5 Compulsory Insurance

(1) Persons subject to compulsory insurance are

1. workers, employees and those engaged in their vocational training, employed for a wage

(...)

(4a) apprentices, trained within the scope of a contract on vocational education according to the act on vocational education in an external institution, are equal with employees engaged in their vocational training in terms of subsection 1 No.1. Persons shall be deemed employees engaged in their vocational training in terms of subsection 1 No. 1 who are in out-of-school training as not-regular members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity.

(...)

Section 6 Exemption from Insurance

(1) The following shall be exempt from insurance

(...)

4. clerics of religious societies recognised as corporations under public law if in case of illness they are entitled under the legal provisions or principles applicable to civil servants to continued payment of remuneration and allowances

(...)

7. statutory members of clerical brotherhoods, deaconesses and similar persons if they engage in sick-nursing, education or other non-profit work on predominantly religious or moral grounds and do not receive more than their free board and lodging or a small sum by way of remuneration that merely suffices to cover their direct needs in terms of accommodation, food, clothing and the like,

(...)

(2) Surviving dependants of the persons referred to in subsection 1 Nos. 2 and 4 to 6 who are subject to compulsory insurance in accordance with section 5 subsection 1 No. 11 shall be exempt from insurance if they derive their pension rights only from the insurance of these persons and in case of illness are entitled under the legal provisions or principles applicable to civil servants to allowances .

Chapter IV: Relationship between the Health Insurance Funds and the Service-Providers

Section 111a Framework Recommendations Regarding Prevention and Rehabilitation Measures

(...) for prevention and rehabilitation facilities allocatable to a church or religious community under public law or another independent non-profit bearer, the framework recommendations may be concluded together with the other partners to the framework recommendations and by the church or the religious community or the welfare association to which the facility belongs.

(...)

Section 132a Provision of Domestic Sick-Nursing

(1) (...) for nursing services allocatable to a church or religious community under public law or another independent non-profit bearer, the framework recommendations may be concluded together with the other partners to the framework recommendations and by the church or the religious community or the welfare association to which the facility belongs. (...)

(...)

Chapter VIII: Funding

Section 251 Contributions Born by Third Parties

(...)

(4b) For persons undergoing out-of-school training as non-statutory members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity, the clerical brotherhood or similar religious confraternity shall bear the contributions.

(...)

b) Social Code (Sozialgesetzbuch - SGB) Sixth Book (VI): National Pensions Insurance of 18 December 1989 (Federal Law Gazette [BGBl.] Part I p. 2261, corr. BGBl. 1990 Part I p. 1337), last amended by Act of 20 December 2001 (BGBl. Part I p. 4010)

Chapter I: Group of Insured Persons

Section 1 Employees

Persons subject to compulsory insurance are

(...)

4. members of clerical brotherhoods, deaconesses and members of similar confraternities during their service for the community and during their out-of-school training.

(...)

Section 5 Exemption from Insurance

(1) The following shall be exempt from insurance

(...)

2. other employees of corporations, institutions or foundations under public law, their associations including the central associations or their working groups if they are entitled to expectancies of support in accordance with legal provisions or principles applicable to civil servants or corresponding canonical regulations in the event of reduced ability to work and in old age, as well as to support for surviving dependants, and it is ensured that the guarantee will be implemented,
3. statutory members of clerical brotherhoods, deaconesses and members of similar confraternities, if they are entitled to an expectancy in accordance with the rules of the

community to the support usual in the community in the event of reduced ability to work and in old age, and it is ensured that the guarantee will be implemented,

in this employment and in other employment to which the guarantee of a support expectancy is applied. The competent Federal Minister shall decide on meeting the requirements in accordance with the first sentence Nos. 2 and 3 and the application of the guarantee to further employments for employees in the Federation and with official employers and other employers subject to Federal supervision, in other cases the highest administrative authority of the Land in which the employers, brotherhoods or communities have their seat.

(...)

(4) The following persons shall be exempt from insurance who

(...)

2. in accordance with the legal provisions or principles applicable to civil servants or corresponding canonical regulations or in accordance with the provisions of a professional supply facility draw a pension after reaching an age limit or who receive the pension usual in the community in old age in accordance with subsection 1 first sentence No. 3, or

(...)

Section 6 Exemption from Compulsory Insurance

(1) The following persons shall be exempt from compulsory insurance

(...)

2. teachers or educators employed at non-public schools or institutions if they are in accordance with principles applicable to civil servants or corresponding canon law provisions entitled to expectancies of support in the event of reduced ability to work and in old age, as well as to support for surviving dependants, and it is ensured that the guarantee will be implemented,

(...)

Chapter IV: Funding

Section 162 Contributory Earnings of Employees

contributory earnings shall be

(...)

4. with members of clerical brotherhoods, deaconesses and members of similar confraternities the benefits in cash and remuneration in kind they receive which they receive personally, but with members that on termination of their training are not entitled to the support usual in the community, or for whom the guarantee is not ensured (section 5 subsection 1 first sentence No. 3) at least forty percent of the reference value,

(...)

Section 168 Payment of Contributions for Employees

(1) The contributions shall be borne

(...)

4. in the case of members of clerical brotherhoods, deaconesses and members of similar confraternities by the brotherhoods or confraternities if the monthly wage does not exceed forty percent of the monthly reference value, otherwise half each by the members and the brotherhoods or confraternities,

(...)

Section 206 Supplement Payment for Clerics and Religious

(1) Clerics and other employees of the religious societies recognised as corporations under public law, members of clerical brotherhoods, deaconesses and members of comparable charitable communities recognised as expellees and who exercised prior to their expulsion employment or an activity in terms of section 5 subsection 1 first sentence No. 2 or No. 3, may if they have not reassumed similar employment or activity in the inland, on application for the times of exemption from insurance, but backdated to a maximum of 1 January 1943, pay voluntary contributions unless these times are already covered by contributions.

(2) Subsection 1 shall not apply if the times of exemption from insurance are eligible in terms of a pension from

1. public service, or
2. employment with a right to a support in accordance with the legal provisions or principles applicable to civil servants or corresponding canonical regulations

or are recognised as eligible when the pensionable event takes place.

(3) The subsequent payment shall only be permissible if the general waiting time has been completed, or if compulsory contributions have been paid for at least 24 calendar months after taking up residence in the inland .

c) Social Code (Sozialgesetzbuch - SGB) Seventh Book (VII) National Accident Insurance of 7 August 1996 (Federal Law Gazette [BGBl.] Part I p. 1254), last amended by Ordinance of 29 October 2001 (BGBl. Part I p. 2785)

Chapter I: Tasks, Group of Insured Persons, Event of Loss

Section 2 Insurance by Act of Law

(1) The following shall be ensured by act of law

(...)

10. persons working on an honorary basis for corporations, institutions or foundations under public law or their associations or working groups, for public-law religious communities or for the institutions named in Nos. 2 and 8 or participating in training events for this activity,

(...)

Section 4 Exemption from Insurance

(1) The following shall be exempt from insurance

(...)

3. statutory members of clerical brotherhoods, deaconesses and members of similar confraternities, if they are entitled to an expectancy in accordance with the rules of the community to the support usual in this community, and it is ensured that the guarantee will be implemented.

(...)

8. Procedural Law

a) Act on International Mutual Assistance in Criminal Matters (*Gesetz über die Internationale Rechtshilfe in Strafsachen - IRG*)

of 23 December 1982 (Federal Law Gazette [BGBl.] Part I p. 2071), in the version of the proclamation of 27 June 1994 (BGBl. Part I p. 1537), last amended by Act of 13 December 2001 (BGBl. Part I p. 3574)

Second Part: Extradition Abroad

Section 6 Political Criminal Offences, Political Persecution

(...)

- (2) Extradition shall be inadmissible if serious reasons exist for the presumption that the persecutee in the event of his/her extradition would be persecuted or punished because of his/her race, religion, nationality, membership of a specific social group or his/her political views or that his/her situation would be made worse for one of these reasons.

Part III: Transit

Section 43 Permissibility of Transit

(...)

- (4) Sections 6 to 8 shall apply mutatis mutandis to transit.

b) Courts Constitution Act (*Gerichtsverfassungsgesetz - (GVG)*)

of 27 January 1877 (Reich Law Gazette [RGBl.] p. 41), in the version of the proclamation of 9 May 1975 (BGBl. Part I p. 1077), last amended by Act of 27 April 2002 (BGBl. Part I p. 1467)

Fourth Title: Courts of Judges and Juries (Schöffengerichte)⁷³

Section 34 [Other Persons Not to be Appointed]

(1) Furthermore, the following shall not be appointed to the office of lay judge:

(...)

6. religious servants and members of such religious associations whose statutes oblige them to reside together;

(...)

Fifteenth Title: Language of the Court

Section 189 [Interpreter's Oath]

(1) The interpreter shall give an oath to the effect that:

he/she will interpret truly and conscientiously.

If the interpreter states that he/she does not wish to take an oath for reasons of faith or conscience, he/she shall give an affirmation. This affirmation shall be equivalent to an oath; the interpreter shall be informed of this fact.

(...)

c) Introductory Act to the Courts Constitution Act (Einführungsgesetz zum Gerichtsverfassungsgesetz)

*Act of 27 January 1877 (Reich Law Gazette [RGBl.] p. 77), last amended by Act
of 27 July 2001 (BGBl. Part I p. 1887)*

Part II: Interprocedural Ex Officio Communications

Section 12 [Transmission of Personal Data]

(1) The provisions of this part shall apply to the transmission of personal data ex officio by courts of ordinary jurisdiction and public prosecutor's offices to public bodies of the Federation or of a Land for other purposes than those of the proceedings for which the data were collected. Special legal provisions of the Federation, or, if the data are transmitted from proceedings governed by Land law, of a Land, deviating from sections 18 to 22, shall take preference over these provisions.

(2) Subsection 1 shall apply mutatis mutandis to the transmission of personal data to bodies of the public-law religious societies if it is ensured that the recipient has taken sufficient data protection precautions.

(...)

⁷³ Note: Schöffengerichte are courts with one professional and two lay judges.

Section 14 [Transmission in Criminal Matters and Private Action Proceedings]

(1) In criminal matters the transmission of personal data on the accused concerning the subject-matter of the proceedings shall be permissible if insight into the data is necessary in the view of the transmitting body for

(...)

4. service law measures or supervisory measures if

a) the person concerned is subject to service, state or professional control because of his/her profession or official capacity, is a cleric of a church or holds a corresponding office in another public-law religious society or is an civil servant of a church or of a religious society, and

b) the data permit one to conclude a breach of duties to be observed in the exercise of the profession or the performance of the tasks from the official capacity or are otherwise suited to give rise to doubt as to suitability, reliability or qualification,

5. the decision regarding dismissal or for other measures under labour law, for the decision on removal from office, for the revocation, withdrawal, restriction of official permission, approval or admission to exercise a trade, another economic enterprise or a profession or to use a professional designation, for the prohibition of the professional, trade or honorary activity or the other economic enterprise or for the prohibition of the recruitment, employment, supervision of children and juveniles, for the prohibition of the implementation of vocational training or for the order of a condition if

a) the person concerned is not a under No.4 falling member of the public service or of the service of a public-law religious society, a trader or an authorised agent of a trader or a person charged with the management of a business establishment or other economic enterprise, another working person or holder of an honorary office, and

b) the data permit one to conclude a breach of duties to be observed in the exercise of the service, trade, other economic enterprise, profession or honorary office, or otherwise suited to give rise to doubt as to suitability, reliability or qualification,

6. service order measures with consequences under support law or for the deprivation of support from surviving dependants, if the person concerned receives or can claim support payments from a public-law office or employment or from an office or employment with a church or other public-law religious society,

(...)

d) Administrative Procedure Act (Verwaltungsverfahrensgesetz - VwVfG)

of 25 May 1976 (Federal Law Gazette [BGBl.] Part I p. 1253), in the version of the proclamation of 21 September 1998 (BGBl. Part I p. 3050), last amended by Act of 3 December 2001 (BGBl. Part I p. 3307)

Section 2 Exceptions from the Area of Application

(1) This act shall not apply to the activities of the churches, religious societies and ideological communities and their associations and institutions.

(...)

*e) Administrative Execution Act (Verwaltungsvollstreckungsgesetz - VwVG)
of 27 April 1953 (Federal Law Gazette [BGBl.] Part I p. 157), last amended by Act
of 17 December 1997 (BGBl. Part I pp. 3039 and 3043)*

Section 17 Execution against Authorities

Means of coercion shall be inadmissible against authorities and legal entities under public law unless otherwise stipulated.

*f) Ordinance on the Procedure of the Administrative Courts
(Verwaltungsgerichtsordnung - VwGO)*

*of 21 January 1960 (BGBl. Part I p. 17), in the version of the proclamation
of 19 March 1991 (BGBl. Part I p. 686), last amended by Act of 20 December 2001 (BGBl.
Part I p. 3987)*

Part 1: Courts Constitution

Chapter III: Honorary Judges

Section 23 [Parties Entitled to Refuse]⁷⁴

(1) The following may decline the appointment to the office of an honorary judge

1. clerics and religious servants,

(...)

g) Ordinance on Criminal Procedure (Strafprozeßordnung - StPO)

*of 1 February 1877 (Reich Law Gazette [RGBl.] p. 253), in the version of the proclamation
of 7 April 1987 ([BGBl. Part I p. 1074, corr. p. 1319), last amended by Act
of 15 February 2002 (BGBl. Part I p. 682)*

⁷⁴ Note: The same regulation is contained with regard to the finance courts in section 20 subsection 1 No. 1 of the Ordinance on the Procedure of the Finance Courts (Finanzgerichtsordnung) dated 6.10.1965 (BGBl. Part I p. 1477), in the version of 28.3.2001 (BGBl. Part I p. 442).

Book One: General Provisions

Chapter V: Time Limits and Restoration of the Status Quo Ante

*Section 43 [Time Limits Determined in Weeks and Months]*⁷⁵

(...)

(2) If the end of a time limit falls on a Sunday, a public holiday or a Saturday, the time limit shall expire at the end of the next workday.

Chapter VI Witnesses

Section 53 [Right to Refuse to Give Evidence on Professional Grounds]

(1) The following persons may also refuse to give evidence:

1. clerics concerning the information entrusted to them or became known to them in their capacity as spiritual advisers;⁷⁶

(...)

(2) The persons specified in subsection 1, Nos. 2 to 3b may not refuse to give evidence if they have been released from their obligation of secrecy.

Section 53a [Right of Assistants to Refuse to Give Evidence]

(1) Considered equivalent to the persons specified in section 53 subsection 1, Nos. 1 to 4 shall be their assistants and persons, while being trained for their profession participate in this professional activity. The persons specified in section 53 subsection 1, Nos. 1 to 4, shall decide whether these assistants should exercise their right to refuse to give evidence, except if such a decision cannot be obtained within a foreseeable period.

(2) Release from the obligation of secrecy (section 53 subsection 2) shall also apply to the assistants.

Section 57 [Caution of Witnesses]

Before examination, witnesses shall be admonished to tell the truth and shall be informed that their statements must be made under oath, except as otherwise permitted or provided by law. At the same time instruction shall be given on the importance of the oath, on the possibility to choose between the oath with religious affirmation or without religious affirmation, and on the criminal law consequences of incorrect or incomplete statements.

⁷⁵ Note: Similar consideration of Sundays and holidays is contained for instance in the following provisions of the Ordinance on Civil Procedure: section 188 for delivery of documents at night and on Sundays, section 216 for setting of periods ex officio and section 222 for calculating time limits. Also, for instance in section 289 of the Due Ordinance (Abgabenordnung) enforcement is ruled out on Sundays and general holidays.

⁷⁶ Note: This provision only applies to clergy of Christian churches and other state-recognised religious communities.

Section 66 c [Form of Oath]

(1) The oath with religious affirmation shall be taken in such a way that the judge addresses the following words to the witness:

»You swear by God the Almighty and Omniscient that, to the best of your knowledge, you have told the whole truth and have not concealed anything.«

whereupon the witness says the words:

»I swear, so help me God.«

(2) The oath without religious affirmation shall be taken in such a way that the judge addresses the following words to the witness:

»You swear that, to the best of your knowledge, you have told the whole truth and have not concealed anything.«

whereupon the witness says the words:

»I swear.«

(3) If a witness indicates that as a member of a religious community or of a community professing a creed he wishes to use a formula of affirmation used by this community, he/she may add it to the oath.

Section 66 d [Affirmation Equivalent to an Oath]

(1) If a witness indicates that he does not wish to take an oath for reasons of faith or conscience, he shall affirm the truth of his testimony. The affirmation shall be equivalent to an oath; the witness shall be informed of this fact.

(2) The truth of the testimony shall be affirmed in such a way that the judge addresses the following words to the witness:

»Aware of your responsibility before the court you affirm that, to the best of your knowledge, you have told the whole truth and have not concealed anything«

whereupon the witness says:

»Yes.«

(3) Section 66c subsection 3 shall apply mutatis mutandis.

Section 66 e [Swearing of Mute Witnesses]

(1) Mute persons shall take the oath in such a way that they write down and sign the following words:

»I swear by God the Almighty and Omniscient that, to the best of my knowledge, I have told the whole truth and have not concealed anything.«

Mute persons who cannot write shall take the oath by signs with the help of an interpreter.

(2) The provisions of Section 66c subsections 2 and 3 and Section 66d shall apply mutatis mutandis.

Chapter VIII: Seizure, Interception of Telecommunications, Computer-Assisted Search, Use of Technical Devices, Use of Undercover Investigators and Search

Section 97 [Exemptions for Persons Entitled to Refuse to Give Evidence]

(1) The following objects shall not be subject to seizure

1. written communications between the accused and the persons who, according to section 52 or section 53 subsection 1, Nos. 1 to 3b, may refuse to give evidence;
2. notes by persons specified in section 53 subsection 1, Nos. 1 to 3b, concerning information entrusted to them by the accused or concerning other circumstances covered by the right to refuse to give evidence;
3. other objects, including the findings of medical examinations, covered by the right of the persons specified in section 53 subsection 1, Nos. 1 to 3b, to refuse to give evidence.

(2) These restrictions shall apply only if these objects are in the custody of a person entitled to refuse to give evidence. (...) The restrictions of seizure shall not apply if the persons entitled to refuse to give evidence are suspected of participation or accessoriness after the fact, obstruction of justice or handling stolen goods or where the objects concerned have been generated by means of a criminal offence or have been used or are intended for use in committing a criminal offence, or where they emanate from a criminal offence.

(...)

(4) Subsections 1 to 3 shall apply *mutatis mutandis* to cases where persons mentioned in section 53a may refuse to give evidence.

(...)

Section 100 c [Secret Investigations]

(1) Without the knowledge of the person concerned

(...)

2. the spoken word not spoken publicly may be bugged and recorded using technical means if certain facts substantiate the suspicion that a person has committed a criminal offence designated in section 100a and if other means of ascertaining the facts or determining the offender's whereabouts would offer no prospects of success or would be considerably more difficult,

3. the spoken word not spoken publicly by the accused in a dwelling may be bugged and recorded using technical means if certain facts substantiate the suspicion that a person has

a) counterfeited money or securities (sections 146, 151, 152 of the Criminal Code), counterfeited payment cards and blank Euro cheques (section 152a of the Criminal Code),

committed aggravated trafficking in human beings in accordance with section 181 subsection 1, Nos. 2, 3, of the Criminal Code,

committed murder, manslaughter or genocide (sections 211, 212, 220a of the Criminal Code);

committed a criminal offence against personal liberty (section 239, 234a, 239a, 239b of the Criminal Code);

(...)

and if other means of ascertaining the facts or determining the offender's whereabouts would be disproportionately more difficult or would offer no prospects of success.

Section 100 d [Order, Regulation on Use]

(...)

(2) Measures in accordance with section 100c subsection 1 No. 3, may be ordered only by the criminal division of the District Court stipulated in section 74a of the Courts Constitution Act in the district where the public prosecutor's office is located. (...)

(3) A measure in accordance with section 100c subsection 1, No. 3, shall be inadmissible in cases falling under section 53 subsection 1.⁷⁷ (...) In cases falling under in sections 52 and 53a, information gained from measures in accordance with section 100c subsection 1, No. 3 may be used only if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in ascertaining the facts or determining the offender's whereabouts. Where the persons entitled to refuse to give evidence are suspected of participation, accessoriness after the fact, obstruction of justice or of handling stolen goods, the first sentence shall not apply; moreover, this circumstance must be taken into consideration when proportionality is assessed. A decision on the admissibility of using information shall be given during the preparatory proceedings by the court designated in the first sentence of subsection 2.

Second Book: Preparation at First Instance

Chapter VI: Main Hearing

Section 249 Reading Out Documents

(1) Certificates and other documents serving as evidence shall be read out at the main hearing. This shall apply in particular to previous criminal judgments, criminal records and extracts from parish registers and registers of births, marriages and deaths and to written records of a judicial inspection.

(...)

⁷⁷ Note: There is debate as to whether a confessional box is covered by the definition of 'dwelling' in terms of section 100c subsection 1 No. 3. The Federal Parliament Printed Matter dated 15.01.1998 No. 13/9961 p. 7 argues for the inclusion of confessional boxes in the definition of 'dwelling'. If one however rejects inclusion, bugging campaigns in accordance with section 100 c subsection 1 No. 2 of the Ordinance on Criminal Procedure are possible. Some people favour, for clericalists, in light of their special constitutional status, in general an expansion of the area of application of section 100 d subsection 3 first sentence of the Ordinance on Criminal Procedure. Accordingly, also (confidential) discussions between an accused person and a cleric outside a dwelling may be covered by the prohibition to take evidence under section 100 d subsection 3 first sentence of the Ordinance on Criminal Procedure.

h) Ordinance on Civil Procedure (Zivilprozeßordnung)

of 30 January 1877 (Reich Law Gazette [RGBl.] p. 83), in the version of 12 September 1950 (BGBl. Part I pp. 455 and 533), last amended by Act of 14 December 2001 (Federal Law Gazette [BGBl.] Part I p. 3712)

Second Book: Proceedings at First Instance

Part I: Proceedings before the District Courts

Section 383 [Right to Refuse to Give Evidence for Professional Reasons]

(1) The following shall be entitled to refuse to give evidence :

(...)

4. clerics⁷⁸ with regard to what is entrusted to them in carrying out cure of souls;

(...)

6. persons to whom facts are entrusted by virtue of their office, profession or trade, the confidentiality of which is required by their nature, or by statutory provisions concerning the facts to which the obligation of secrecy refers.

(3) Questioning of the persons designated at Nos. 4 to 6, even if testimony is not refused, shall not be concerned with facts in light of which it emerges that testimony cannot be given without violating the obligation of secrecy.

Section 480 [Instruction]

Prior to giving the oath, the judge shall suitably instruct the person obliged to take the oath of the significance of the oath and of the fact that he may give the oath with or without a religious affirmation.

Section 481 [Mode of Oath-Taking]⁷⁹

(1) The oath with religious affirmation shall be given such that the judge speaks the norm of the oath with the initial wording:

»You swear by God the Almighty and Omniscient«

and the person obliged to take the oath thereupon says the words (wording of the oath):

»I swear, so help me God.«

(2) The oath without religious affirmation shall be given such that the judge speaks the norm of the oath with the initial wording:

»You swear«

⁷⁸ Note: The term 'cleric' within the meaning of this provision is the subject of contention: Some people state, this relates to the clergy of all religious communities, whilst others are of the opinion it is restricted to the priests of the public-law religious communities. In accordance with the latter view, section 383 subsection 1 No. 6 is applicable to the religious servants of other religious communities.

⁷⁹ Note: Subsection 3 corresponds to section 66 c subsection 3 of the Ordinance on Criminal Procedure (in the second part, item P, No. 8 (g)).

and the person obliged to take the oath thereupon says the words (wording of the oath):

»I swear it.«

(...)

Section 483 [Oath-Taking of Mute Persons]

(1) Mute persons who can write shall take the oath in such a way that they write down and sign the wording of the oath which contains the norm of the oath.

(2) Mute persons who cannot write shall take the oath by signs with the help of an interpreter.

Section 484 [Affirmation Equivalent to an Oath]

(1) If an person obliged to take an oath states that he/she does not wish to take an oath for reasons of faith or conscience he/she shall give an affirmation. Such affirmation shall be equivalent to an oath; the obligee shall be informed of this fact.

(2) The affirmation shall be given such that the judge speaks the norm of the oath as norm of affirmation with the initial wording:

»You affirm in awareness of your responsibility before the court«

and the obligee thereupon says:

»Yes«.

(3) Section 481 subsections 3 and 5 and section 483 shall apply mutatis mutandis.

Book VIII: Compulsory Execution

Part II: Compulsory Execution in Respect of Pecuniary Claim

Section 811 [Exempt Property]

(1) The following property shall not be subject to levy of execution :

(...)

7. items of work clothing, as well as service equipment, as far as they are intended to be used by the debtor, as well as in the case of civil servants, clerics, solicitors, notaries, physicians and midwives the items required to exercise their professions, including suitable clothing;

(...)

10. the books intended for use by the debtor and his/her family in the church or school or another instruction facility or in meditation at home;

(...)

Section 882a [Time Limit - Inadmissibility - Area of Application]

(1) Unless rights in rem are pursued, compulsory execution against the Federation or a Land in respect of a pecuniary claim may not start until four weeks after the creditor has communicated his/her intention to levy compulsory execution to the authority called upon to represent the debtor and also informed, where compulsory execution is to be effected against property

managed by another authority, the competent Minister of Finance. Receipt of the information shall be certified to the creditor on request. Where in such cases compulsory execution is to be effected by the bailiff, the bailiff shall be appointed by the execution court on application of the creditor.

(2) Execution shall be inadmissible against property that is indispensable for carrying out the public tasks of the debtor or the sale of which is opposed by a public interest. (...)

(3) The provisions contained in subsections 1 and 2 shall apply to compulsory execution against corporations, institutions and foundations under public law on condition that the legal representatives replace the authority in terms of the subsection 1. (...)

Part IV: Affirmation in Lieu of Oath and Detention

Section 910 [Arrest of Civil Servants]

Prior to the arrest of a civil servant, a cleric or a teacher at a public instruction institute, the superior public authority shall be informed by the bailiff. The arrest may not be effected until the superior authority has ensured the official deputation of the debtor. The authority shall be obliged to take the necessary measures and inform the bailiff thereof without delay.

i) Court Costs Act (*Gerichtskostengesetz*)

of 18 June 1878 (Reich Law Gazette [RGBl.] p. 141), in the version of the proclamation of 15 December 1975 (Federal Law Gazette [BGBl.] Part I p. 3047), last amended by Act of 22 February 2002 (BGBl. Part I p. 981)

Section 2 Exemption from Costs

(...)

(2) Other provisions of Federal law by means of which exemption in rem or personal exemption from costs has been granted in respect of proceedings before the courts of ordinary jurisdiction and the Finance and Social Courts shall remain in force. Provisions of Land law which grant an exemption in rem, or in which personal exemption from costs has been granted in respect of these proceedings shall remain unaffected.

(3) Before the courts of administrative jurisdiction and the courts for labour matters, provisions of Federal or Land law relating to personal exemption from costs shall not apply. Provisions relating to exemption in rem from costs shall remain unaffected.

j) Land Judiciary Costs Act [of Baden-Württemberg] (*Landesjustizkostengesetz*)
of 30 March 1971 (Law and Ordinance Gazette [GVBl.] of Baden-Württemberg p. 96)
in the version of 15 January 1993 (GVBl. of Baden-Württemberg p. 110, corr. p. 244), last amended by Act of 20 November 2001 (GVBl. of Baden-Württemberg p. 605)

Section 7 Exemption from Fees

(1) The following shall be exempt from paying the fees levied by the courts of ordinary jurisdiction in civil matters, the authorities of non-contentious jurisdiction and the authorities of the administration of justice and the Labour Court administration:

1. churches, other religious and ideological communities, as well as their sub-associations, institutions and foundations, in each case if they are legal entities under public law;

(...)

(3) Exemption from fees in accordance with subsections 1 and 2 shall also apply to recording and certification fees. Exemption from fees in accordance with subsection 1 shall also apply to bailiff fees; fees that cannot be collected from the debtor shall be refunded by the creditor.

Part III: State-Church Treaties

1. Concordat Between the Holy See and the German Reich (Konkordat zwischen dem Heiligen Stuhl und dem Deutschen Reich - Reichskonkordat) of 20 July 1933 (Reich Law Gazette [RGBl.] Part II p. 679)

His Holiness Pope Pius XI and the President of the German Reich, moved by a common desire to consolidate and promote the amicable relations existing between the Holy See and the German Reich, willing to regulate the relations between the Catholic Church and the State for the whole territory of the German Reich in a permanent manner and on a basis acceptable to both parties, have decided to conclude a solemn agreement, which will supplement the concordats already concluded with certain individual German Ländern, and will ensure for the remaining Länder fundamentally uniform treatment of the respective questions.

For this purpose: His Holiness Pope Pius XI has appointed as his plenipotentiary His Eminence the Most Reverend Lord Cardinal Eugenio Pacelli, his Secretary of State and the President of the German Reich has nominated as plenipotentiary the Vice-Chancellor of the German Reich, Mr. Franz von Papen, who, having exchanged their respective certificates of authority and found them to be in due and proper form, have agreed on the following articles:

Article 1

The German Reich guarantees freedom of confession and public exercise of the Catholic Religion.

It recognises the right of the Catholic Church, within the limits of those laws which are applicable to all, to regulate and manage her own affairs independently, and, within the framework of her own competence, to issue laws and orders binding on her members.

Article 2

The concordats concluded with Bavaria (1924), Prussia (1929) and Baden (1932) remain in force, and the rights and liberties of the Catholic Church recognised therein are secured unchanged within the territories of the states concerned. For the remaining Länder the agreements entered into in the present concordat come into force in their entirety. These last are also binding for those three Länder named above in so far as they affect matters not regulated by the Land concordats or are complementary to the settlement already made.

In the future, Land concordats will be concluded only in accordance with the Reich Government.

Article 3

In order to foster good relations between the Holy See and the German Reich, an Apostolic Nuncio will reside in the capital of the German Reich and an Ambassador of the German Reich at the Holy See, as heretofore.

Article 4

In its communication and correspondence with the bishops, clerics and other members of the Catholic Church in Germany, the Holy See enjoys full freedom. The same applies to the bishops and other diocesan authorities in their communication with the faithful in all matters belonging to their pastorate .

Instructions, ordinances, pastoral letters, official diocesan gazettes, and other enactments regarding the spiritual direction of the faithful issued by the ecclesiastical authorities within the framework of their competence (article 1, section 2) may be published without hindrance and brought to the notice of the faithful in the form hitherto usual.

Article 5

In the exercise of their spiritual activities the clerics enjoy the protection of the state in the same way as civil servants of the state. The state will take proceedings in accordance with the general legislation of the state against any outrage offered to the clerics personally or directed against them in their capacity as clerics, and against any interference with their official acts, and in case of need will provide official protection.

Article 6

Clerics and religious are freed from any obligation to succession to public offices and such obligations as, according to the provisions of canon law, are incompatible with the holy or religious orders. This applies particularly to the office of lay judge, juryman, member of taxation committee or member of the Finance Courts.

Article 7

For the acceptance of an appointment or office in the state, or in any corporation under public law dependent on the state, the clerics need the *nihil obstat* of their diocesan ordinary, as well as that of the ordinary at the seat of the corporation under public law. The *nihil obstat* may be withdrawn at any time for important reasons affecting ecclesiastical interests.

Article 8

The official income of the clerics is exempt from compulsory execution to the same extent as is the official remuneration of civil servants of the Reich and state.

Article 9

The clerics may not be required by judicial and other authorities to give information concerning matters which have been entrusted to them while exercising the cure of souls, and which therefore come within the obligation of pastoral secrecy.

Article 10

The wearing of clerical dress or of a habit of an order on the part of lay folk, or of clerics or religious who have been forbidden to wear them by a final and valid injunction made by the competent ecclesiastical authority and officially notified to the state authority, is liable to the same penalty on the part of the state as the abuse of military uniform.

Article 11

The current diocesan organisation and circumscription of the Catholic Church in the German Reich shall persist. A new establishment of a bishopric or of an church province appearing to be required in future or other alterations of diocesan circumscriptions, so far as they concern new formations within the boundaries of a German Land, remain subject to the understanding with the competent Land Government. If new establishments and alterations which extend beyond the boundaries of a German Land communication with the Reich Government takes place, to whom it shall be left to bring about the consent of the Land Governments in question. The same applies to new establishments or alterations of church provinces involving several German Länder. The foregoing conditions shall not apply to such shifts of ecclesiastical borders taking place merely in the interests of local cure of souls.

In the case of any territorial reorganisation within the German Reich, the Reich Government will get in touch with the Holy See for rearrangement of the diocesan organisation and circumscription.

Article 12

Irrespective of the provisions of article 11, church offices may be established and transformed freely, if no expenditures are claimed from state funds. The state's cooperation in forming and altering parishes shall be carried out according to guidelines to be agreed upon with the diocesan bishops, and for which the Reich Government will endeavour to secure uniform formation as far as possible from the Länder Governments.

Article 13

Catholic parishes, parish and diocesan associations, Episcopal sees, bishoprics and chapters, religious orders and brotherhoods, as well as institutions, foundations and property of the Catholic Church which are under the administration of ecclesiastical organs, shall retain or acquire respectively legal capacity in the sphere of the state according to the general provisions of law. They shall remain corporations under public law in so far as they have been such hitherto; similar rights may be granted to the remainder in accordance with those provisions of the law which are applicable to all.

Article 14

The church shall have principally the right to appoint freely to all church offices and benefices without the co-operation of the State or of civil communities, in so far as other provisions have not been made in the concordats mentioned in article 2. The regulation made for appointment to the Metropolitan See of the Upper Rhine Church Province of Freiburg shall apply *mutatis mutandis* to the two Suffragan Bishoprics of Rottenburg and Mainz, as well as to the Bishopric of Meißen. With regard to Rottenburg and Mainz the same applies to appointments to the Cathedral Chapter bodies, and to the regulation of the right of patronage.

Furthermore, there is accord on the following points:

1. Catholic clerics who hold an religious office or who exercise pastoral or teaching functions in Germany must:
 - a) be German citizens,

- b) have an school leaving certificate entitling them to studies at a German secondary school,
 - c) have studied philosophy and theology for at least three years at a German state university, a German ecclesiastical academic educational institution, or a papal university in Rome,
2. The Bull nominating Archbishops, bishops, coadjutors *cum jure successionis*, or a *Praelatus Nullius*, will not be issued until the name of the person designated has been communicated to the governor of the Reich in the competent Land, and until it has been ascertained that no objections of a general political nature exist.

In case of church and state accord, the requirements named in paragraph 2 No. 1, (a) (b) and (c) may be disregarded.

Article 15

Religious orders and brotherhoods are not subject to any special restrictions on the part of the state, as regards their foundation, establishment, their number, and – subject to article 15, paragraph 2 - the qualities of members, their activity concerning cure of souls, education, sick-nursing and charitable work, or as regards the management of their affairs and the administration of their property.

Religious superiors whose headquarters are within the German Reich must be German citizens. Heads of provinces and superiors of religious orders, whose headquarters lie outside the territory of the German Reich, have the right of visitation of those of their establishments which lie within Germany even if they are foreign nationals.

The Holy See will make sure that the provincial organisation of establishments of orders within the German Reich shall be such that, as far as possible, German establishments do not fall under the jurisdiction of foreign heads of provinces. Exceptions may be made in accordance with the Reich Government particularly in cases where the small number of establishments makes the formation of a German province impracticable, or where special grounds exist for the retention of a provincial organisation which is firmly established and has acquired an historic nature.

Article 16

Before bishops take possession of their Dioceses they are to take an oath of loyalty either to the governor of the Reich in the competent Land, or to the President of the Reich, according to the following formula:

»Before God and on the Holy Gospels I swear and promise as becomes a bishop, loyalty to the German Reich and to the Land of ... I swear and promise to respect the in accordance with the constitution legally constituted government and to cause the clerics of my Diocese to respect it. In my dutiful care for the welfare and the interests of the German polity I will in the performance of the office transferred to me, strive for averting all detrimental acts which might endanger it.«

Article 17

The property and other rights of corporations under public law, institutions, foundations and associations of the Catholic Church regarding their assets, are guaranteed according to the general state law.

No building dedicated to public worship may be demolished for any reason whatsoever unless with the previous consent of the competent ecclesiastical authorities.

Article 18

If the public subsidies towards the church, based on law, contract or special legal title, should be detached the Holy See and the Reich will bring about an amicable accord in due time prior to the elaboration of the principles to be established for the redemption .

Also the convention establishing a right is to be considered as special legal title.

The redemption must grant suitable compensation of the claimant for the loss of the state benefits.

Article 19

Catholic theological faculties in state universities are to be maintained. Their relation to ecclesiastical authorities shall be governed by the provisions laid down in the respective concordats and in the final protocols attached to the same, and with due regard to the ecclesiastical provisions in their regard.

Article 20

Where other agreements do not exist, the church has the right to establish theological and philosophical colleges for the training of its clerics, which institutions are exclusively dependent on the ecclesiastical authorities if no state subsidies are in demand.

The establishment, management and administration of seminaries for candidates for Roman Catholic priesthood and ecclesiastical residences for seminarians, within the limits of the law applicable to all, is exclusively the prerogative of the ecclesiastical authorities.

Article 21

Catholic religious instruction in elementary, intermediate, secondary and vocational schools constitutes a part of the regular curriculum, and is to be taught in compliance with the principles of the Catholic Church. In religious instruction, the education to patriotic, civic and social conscientiousness in the spirit of Christian faith and the moral code will be cultivated with special emphasis, as is done in the complete remainder of instruction. The subjects taught and the selection of textbooks for religious instruction will be determined in accordance with the higher ecclesiastical authorities. The higher ecclesiastical authorities will in accordance with the education authority have the opportunity to investigate whether pupils are receiving religious instruction in compliance with the doctrine and demands of the church.

Article 22

With regard to the appointment of teachers of Catholic Religion, communication will take place on the part of the bishop and the Land Government. Teachers declared by the bishop unfit for the further exercise of their teaching functions, either on grounds of their teachings or by reason of their moral conduct, may not be employed as teachers of religion so long as that obstacle exists.

Article 23

The retention of Catholic denominational schools and the establishment of new ones remains ensured. In all communities in which parents or those entitled to bring up the children apply for it, Catholic elementary schools will be established, provided that the number of pupils available appears to be sufficient for a school managed and administered in accordance with the standards prescribed by the state, due regard being had to the local conditions of school organisations.

Article 24

In Catholic elementary schools only such teachers are to be employed as are members of the Catholic Church, and who guarantee to fulfil the special requirements of a Catholic denominational school.

Within the framework of the general vocational training of teachers, institutions will be formed ensuring training of Catholic teachers according to the special requirements of Catholic denominational schools.

Article 25

Religious orders and religious congregations are entitled to establish and conduct private schools, subject to the general laws and legal conditions applying to this. In so far as these schools follow provisions prescribing the curriculum for state schools, those attending them acquire the same qualifications as those attending state schools.

The admission of members of religious orders or religious brotherhoods to the teaching profession, and their appointment to elementary, intermediate, or secondary schools, are subject to the general conditions.

Article 26

Subject to a later comprehensive regulation of marriage law, it is understood that, apart from cases of critical illness of one member of an engaged couple which does not permit of a postponement, also in cases of severe moral emergency, the presence of which must be confirmed by the competent ecclesiastical authority, the ecclesiastical marriage ceremony may precede the civil ceremony.⁸⁰ In such cases the parish priest is obliged to inform the registrar's office of the matter without delay.

⁸⁰ Cf. on this the "Determinations on the interpretation of article 26 of the Reich Concordat" (Bulletin of the Press and Information Office of the Federal Government No. 23 /1957, p. 203): (...)

1. A severe moral emergency justifying the ecclesiastical marriage ceremony preceding the civil ceremony does not pertain if conclusion of the civil ceremony would entail exclusively economic disadvantages for the engaged couple.

2. In accordance with article 26 of the Reich Concordat, if the circumstances therein provided are present, the ecclesiastical marriage ceremony may precede the civil ceremony. In this provision is presupposed that the civil ceremony is to follow the ecclesiastical marriage ceremony in the cases it mentions. Hence, this provision is not applicable if the reasons submitted in the request of the engaged couple to conclude the ecclesiastical marriage ceremony rule out the conclusion of civil marriage after the ecclesiastical marriage ceremony.

The agreement reached for the rest on reserve of the bilateral legal points of view does not permit in future to rely on article 26 of the Reich Concordat with 'pension concubinage' because also in the view of the Holy See article 26 of the Reich Concordat can only apply in cases in which the couple intends to get married at the

Article 27

The German army is granted cure of souls for its Catholic officers, personnel and other officials, as well as for the families of the same exempt from the territorial competent Catholic community.

The management of military chaplaincy lies with the Army Bishop. His ecclesiastical appointment is to be made by the Holy See after contact has been made by the latter with the Reich Government in order to appoint a suitable personality in accordance with it.

The ecclesiastical appointment of military chaplains and other military clerics will be made after previous consultations with the competent authority of the Reich by the Army Bishop. The latter may nominate only such clerics as received permission from their Diocesan Bishop to engage in military chaplaincy. Military clerics have the rights of parish priests with regard to the troops and other army personnel assigned to them.

Detailed provisions relating to the organisation of military chaplaincy will be supplied by an Apostolic Brief. Regulations for the legal aspects of civil service will be drawn up by the Reich Government.

Article 28

In hospitals, penal establishments, and similar institutions of public purse the church is to be permitted for undertaking of pastoral visitation and of religious ceremonies, subject to the general house regulations of the said institutions. If regular cure is established in such institutions, and if clerics have to be appointed as state or other civil servants, such appointments will be made in accordance with the higher ecclesiastical authority .

Article 29

Catholic members of a non-German ethnical minority living within the German Reich, in matters concerning the consideration of their mother tongue in church services, religious instruction and the clubs, societies, and associations of the church, will be treated no less favourable than as it corresponds to the legal and actual situation of members of German origin and language within the boundaries of the corresponding foreign state.

Article 30

On Sundays and the mandatory holidays, a prayer, conforming to the Liturgy, will be inserted following the main religious service for the welfare of the German Reich and its people in all Episcopal, parish, subsidiary and conventual churches of the German Reich.

Article 31

Those Catholic organisations and associations which pursue exclusively religious, cultural or charitable purposes, and, as such, are subordinate to the ecclesiastical authority, will be protected in their establishments and activities.

registrar's office after the ecclesiastical marriage ceremony. This precondition is however not met with 'pension concubinage' because the couple in this case are attempting from the outset to circumvent a registrar's office marriage, and wish only to enter into ecclesiastical marriage in order to retain their pensions.

Those Catholic organisations which besides their religious, cultural and charitable purposes pursue also others, among them social or professional tasks, irrespective of a possible integration into state associations, are to enjoy the protection of article 31, section 1, provided they guarantee to develop their activities outside all political parties.

It is reserved to the Reich Government and the German episcopate, in joint agreement, to determine which organisations and associations come within the scope of this article.

In so far as the Reich and the Länder take charge of sport and other youth organisations, care will be taken that it shall be made possible for the members of the same regularly to practice their ecclesiastical duties on Sundays and holidays, and that they shall not be induced to do anything incompatible with their religious and moral convictions and obligations.

Article 32

On the basis of the special circumstances existing in Germany, and in view of the safeguardings provided through the above provisions of this concordat of a legislation directed to preserve the rights and liberties of the Roman Catholic Church in the Reich and its Ländern, the Holy See will issue provisions for the exclusion of clerics and members of religious orders from membership of political parties, and from engaging in work on their behalf.

Article 33

All matters relating to clerical persons or ecclesiastical affairs, which have not been treated of in the foregoing articles, will be regulated for the ecclesiastical sphere according to current canon law.

Should a difference of opinion arise in future regarding the interpretation or execution of any of the provisions of this concordat, the Holy See and the German Reich will reach a friendly solution by mutual agreement.

Article 34

This present concordat, whose German and Italian texts have equal binding force, shall be ratified, and the documents of ratification shall be exchanged. It comes into force from the day of their exchange.

*Final Protocol*⁸¹ *in re Article 3*

The Apostolic Nuncio to the German Reich, according to the exchange of notes between the Apostolic Nunciature in Berlin and the Reich Foreign Office on 11 and 27 March, shall be the Dean of the Diplomatic Corps thereto accredited.

Final Protocol in re Article 13

It is understood that the church the right to levy taxes remains ensured.

⁸¹ Note: The final protocol forms an "integral part of the concordat itself".

Final Protocol in re Article 14 Para 2 No. 2

It is understood that when objections of a general political nature exist, they shall be presented within the shortest possible time. If after twenty days such representations have not been made, the Holy See will be entitled to assume that no objections exist to the candidate in question. The names of the personalities in question will be kept completely confidential until the announcement of the appointment. A veto power of the state shall not be derived from this article.

Final Protocol in re Article 17

In so far as public buildings or properties are devoted to purposes of the church, these are to be left to them as before, with adherence to possibly existing contracts.

Final Protocol in re Article 19 Second Sentence

This clause is based, at the time of signature of this concordat, particularly on the Apostolic Constitution, "Deus Scientiarum Dominus" of 24 May 1931, and the Instruction of 7 July 1932. It will be a matter for the Reich Government to ensure for all Catholic faculties in Germany coming into question a uniform practice corresponding to the totality of pertinent provisions.

Final Protocol in re Article 20

Ecclesiastical residences at universities and secondary schools which are managed by the church, will be recognised, from the point of view of taxation law, as essentially ecclesiastical institutions in the proper sense, and as component parts of diocesan organisation.

Final Protocol in re Article 24

In so far as private institutions are able after the rearrangement of the teacher training system to meet the state demands valid for all with regard to the training of teachers, existing institutions of religious orders and congregations will be given due consideration in the admission of these institutions.

Final Protocol in re Article 26

A severe moral emergency exists when there are insurmountable or only with disproportionately great expense removable difficulties in procuring the documents necessary for the marriage in due time.

Final Protocol in re Article 27 Para 1

The Catholic officers, civil servants and ranks, as well as their families, do not belong to local parishes, and do not contribute to their maintenance.

Final Protocol in re Article 27 Para 4

The issuance of the Apostolic Brief takes place on consultation with the Reich Government.

Final Protocol in re Article 28

In cases of urgency admittance has to be granted to the clerics at all times.

Final Protocol in re Article 29

Since the Reich Government has seen its way to make concession regarding non-German minorities, the Holy See declares -- in confirmation of its principles it has constantly maintained regarding the rights of the mother tongue in the cure of souls, religious instruction and the conduct of church associations -- that it will take the insertion of a clause of equal value protecting the rights of the German minorities into consideration when establishing concordats with other countries.

Final Protocol in re Article 31 Para 4

The principles laid down in article 31, para 4 apply also to the Labour Service.

Final Protocol in re Article 32

It is understood that equal provisions regarding party political activity will be induced by the Reich for non-Catholic denominations.

The conduct, which has been made an obligation for the clerics and members of religious orders in Germany in fulfilment of article 32, does not mean any sort of restriction of dutiful preaching and interpretation of the dogmatic and moral doctrines and principles of the church.

Secret Appendix to the Reich Concordat

In the case of a transformation of the current German military system entailing the introduction of general compulsory military service, the call up of priests and other members of the clerics of religious orders and of the clergy of the world to render compulsory military service will approximately be regulated in accordance with the Holy See under the terms of the following guiding principles:

- a) Those studying philosophy and theology in ecclesiastical institutions in preparation for the priesthood are exempt from military service and exercises in preparation thereof, excepting in the event of a general mobilisation.
- b) In the case of a general mobilisation, those clerics engaged in diocesan administration or cure of souls will be exempted from appearance before the draft board. As such shall be deemed the diocesan authorities, the members of the diocesan authorities, directors of seminaries and ecclesiastical religious residences, professors of the seminaries, parish priests, curators, rectors, coadjutors and those clerics who are in continual charge of a church providing public religious service.
- c) The remainder of the clerics, provided they will be passed as fit, join the armed forces of the state, in order to provide cure of souls to the troops under the ecclesiastical jurisdiction of the Army Bishop, unless they are called up for medical service.
- d) The remainder of the clerics *in sacris* or members of religious orders who are not yet priests will serve in the medical service. The same should happen where possible in the case of candidates for the priesthood mentioned at a) who have not yet been ordained to the priesthood.

2. Treaty between the Free State of Prussia and the Holy See
(Vertrag des Freistaates Preußen mit dem Heiligen Stuhle - Preußenkonkordat)
of 14 June 1929 (Prussian Law Collection p. 152)

His Holiness Pope Pius XI. and the Prussian Ministry of State, being one mind in the desire to adapt the legal position of the Catholic Church in Prussia to the changed circumstances, have decided to rearrange it permanently in a formal treaty.

For these purposes, His Holiness has nominated as his plenipotentiary His Excellency the Apostolic Nuncio in Berlin and the Archbishop of Sardes Dr. Eugen Pacelli, and the Prussian Ministry of State as its plenipotentiary the Prussian Prime Minister Mr. Dr. Otto Braun, the Prussian Minister of State and Minister of Science, Art and National Education Mr. Professor D. Dr. Carl Heinrich Becker and the Prussian Minister of State and Finance Mr. Dr. Hermann Höpker Aschoff, who, having exchanged their respective certificates of authority and found them to be good and accurate, have agreed to the following provisions:

Article 1

The Prussian State shall grant statutory protection to the freedom of confession and the exercise of the Catholic Religion.

Article 2

(1) The current diocesan organisation and circumscription of the Catholic Church of Prussia shall persist unless amendments result from the following .

(2) An Episcopal see shall once more be established in Aachen, and the collegiate chapter shall be transformed into a Chapter of a Cathedral. The Bishopric of Aachen shall comprise of the governmental district of Aachen, as well as the districts of Grevenbroich, Gladbach, M. Gladbach, Rheydt, Krefeld (urban and rural areas) and Kempen and shall belong to the Church Province of Cologne.

(3) The mission territories previously supervised by the Bishop of Osnabrück shall be incorporated into his bishopric. It shall be in future a Suffragan Bishopric of the Metropolitan of Cologne.

(4) The Episcopal See of Paderborn shall be conferred the character of a Metropolitan Bishopric; the Chapter of a Cathedral there shall become a metropolitan chapter. In addition to the Archbishopric of Paderborn, the Church Province of Paderborn shall also include the Bishoprics of Hildesheim and Fulda. The Paderborn Diocese shall assign to the Diocese of Fulda the districts of its Heiligenstadt Commissariat and its Erfurt Deanery.

(5) The Bishopric of Fulda shall leave the district county of Schaumburg to the Bishopric of Hildesheim and the part of the city of Frankfurt previously belonging to it to the Bishopric of Limburg. As in the case of Fulda, this shall also be removed from its previous metropolitan association, but incorporated into the Church Province of Cologne.

(6) The Episcopal See of Breslau shall become the seat of a Metropolitan, the Breslau Chapter of the Cathedral shall be made a metropolitan chapter. The Delegation District of Berlin previously under the authority of the Bishop of Breslau shall become an independent bishopric whose bishop and Chapter of a Cathedral shall take their seat at St. Hedwig in Berlin. A *Praelatura Nullius* shall be established in Schneidemühl for the Western remaining territories of the Archbishopric (Gnesen-)Posen and the Bishopric of Kulm currently administrated by an

Apostolic Administrator. The territory of Pomesania currently co-administrated by the Bishop of Ermland as Apostolic Administrator, previously belonging to the Diocese of Kulm shall be combined with the Bishopric of Ermland. The Bishoprics of Ermland and Berlin and the Prelacy of Schneidemühl shall form, together with the Archbishopric of Breslau, the Breslau Church Province.

(7) The Chapter of the Cathedral in Aachen shall consist of the provost, six residing and four non-residing capitulars and six locum tenens, the Chapter of the Cathedral in Berlin of the provost, five residing and a non-residing capitular and four locum tenens, the Chapter of a Cathedral in Frauenburg in future of the provost, the dean, six residing and four non-residing capitulars and four locum tenens. In the metropolitan chapter of Breslau, the post hitherto reserved to the provost of St. Hedwig in Berlin shall be abolished. In Hildesheim and in Fulda the number of the residing canons shall amount five in future.

(8) One of the non-residing members of the metropolitan chapters of Cologne and Breslau and of the Chapter of the Cathedral of Münster should be taken from the theological faculty existing in the Archbishopric or bishopric in question.

(9) Any new establishment of a bishopric or of an church province appearing to be required in future or other alteration in the diocesan circumscription shall be the subject to supplementary subsequent agreement. This form shall not be required if borders are shifted merely in the interests of local cure of souls.

(10) In order to support the Diocesan Bishop, in future the Archiepiscopal Sees of Cologne, Breslau and Paderborn and the Episcopal Sees of Trier, Münster and Aachen shall be allocated a Auxiliary Bishop nominated by the Holy See at the request of the Diocesan Bishop. According to demand, further Auxiliary Bishops may be appointed in the same manner for the named and other bishoprics. Another place than the seat of the Diocesan Bishop shall only be determined as the seat of a Auxiliary Bishop after consultation with the Prussian State Government.

Article 3

Irrespective of the provisions of article 2, church offices may be established and transformed freely if no expenditures are claimed from state funds. The state's cooperation in forming and altering parishes shall be carried out according to guidelines to be agreed upon with the Diocesan Bishops.

Article 4

(1) The dotation of the Dioceses and diocesan institutions shall amount in future two million eight hundred thousand Reichsmark. In detail it shall be distributed in according to special agreement.

(2) The official dwellings and the buildings serving diocesan purposes shall remain the property of the church. The existing rights of ownership and use shall be secured on request by being entered in the land register.

(3) The previous legal position on diocesan dotations shall continue to be decisive for the redemption of public subsidies in accordance with article 138 para 1 of the Constitution of the German Reich⁸².

Article 5

(1) The ownership and other rights of the corporations under public law, institutions and foundations of the Catholic Church as to their property shall be ensured under the terms of the Constitution of the German Reich.⁸³

(2) As far as state buildings or land are devoted to purposes of the church, they shall remain left to them irrespective of any possibly existing contracts.

Article 6

(1) After an Archiepiscopal or Episcopal See ended, both the Metropolitan or Chapter of a Cathedral in question, as well as the Diocesan Archbishops and Bishops of Prussia shall submit to the Holy See lists of canonically qualified candidates. Estimating these lists, the Holy See shall nominate to the chapter three persons from whom the latter shall elect the Archbishop or bishop in a free, secret ballot. The Holy See shall not appoint anyone as an Archbishop or bishop unless the chapter after election has determined by enquiring of the Prussian State Government that no reservations of a political nature exist against him.

(2) The non-residing canons shall contribute towards setting the list of candidates and in the elections.

Article 7

The Holy See shall not nominate anyone as *Praelatus Nullius* and coadjutor of a diocesan bishop with the right of succession without having determined by enquiring of the Prussian State Government that no reservations of a political nature exist against him.

Article 8

(1) The dignities of the metropolitan chapters and the Chapters of Cathedrals shall be conferred by the Holy See, where there are two dignities, the first (Cathedral Provostry) at the request of the Chapter, the second (Cathedral Deanery) at the request of the Diocesan Bishop, where there is only one dignity (Cathedral Provostry or Cathedral Deanery) this alternately at the request of the chapter and of the Diocesan Bishop.

(2) The canonicates of the chapter shall be filled by the Diocesan Bishops alternately after hearing and with the consent of the chapter. Alternation shall take place separately with residing and non-residing canonicates.

(3) The positions of the Cathedral Locum Tenens shall be filled by the Diocesan Bishop after hearing the chapter.

⁸² Note: Article 138 of the Weimar Constitution is printed in Part I at item A in the context of its being referred to in the Basic Law.

⁸³ Cf. inter alia article 138 para 2 of the Weimar Constitution, first part, item A.

Article 9

(1) In view of the dotation of the Dioceses and diocesan institutions assured in this treaty, a cleric shall only be appointed as ordinary of an Archbishopric or bishopric or the *Praelatura Nullius* as a Auxiliary Bishop, a member of a Chapter of a Cathedral, a Cathedral Locum Tenens, a member of a diocesan authority or as a head or teacher at a diocesan educational establishment if he

- a) has the citizenship of the German Reich ,
- b) has a school-leaving certificate entitling to study at a German university,
- c) has completed at least three years of philosophical-theological studies at a German state university or at one of the Episcopal seminaries determined therefor according to article 12 or at a papal university in Rome.

(2) With church and governmental approval, the requirements named in para 1 (a), (b) and (c) may be waived: in particular studies at other German-language universities than those named at (c) may be recognised.

(3) At least two weeks prior to the intended appointment of a cleric as a member of a Chapter of a Cathedral or as the head or teacher at a diocesan seminary, the competent ecclesiastical body shall give the state authority notice of this intention and, with particular regard to para 1 of this article, and where appropriate to para 2 of article 12, of the personal particulars of the cleric in question. Such a information shall be given immediately after the appointment of a Bishopric (Prelacy) Locum Tenens, of a Auxiliary Bishop and of a Vicar-General.

Article 10

(1) The Diocesan Bishops (the *Praelatus Nullius*) shall make at least the demands made in article 9 para 1 (a) to (c) of clerics to whom an incumbency is to be permanently transferred and those demands named at (a) and (b) of the other clerics to be employed in parish cure of souls. Article 9 para 2 shall apply in both cases.

(2) In the case of the permanent transferral of an incumbency, the Diocesan Bishop (*Praelatus Nullius*) shall immediately after nomination to give notice of the personal particulars of the cleric to the state authority, with special regard to para 1 of this article.

Article 11

Until such time as a new agreement is reached, in particular in case of issuance of the statute provided for in article 83 of the Constitution of the Free State of Prussia⁸⁴, the presentation shall take place on the basis of a so-called state patronage by the state authority only after consultation with the Diocesan Bishop or *Praelatus Nullius* in accordance with an instruction to be separately agreed.

⁸⁴ Note: Article 83 of the Constitution of the Free State of Prussia of 30.11.1920 (Collection of Laws. Prussia p. 543) reads as follows:

At the request of a party concerned, an existing patronage shall be rescinded as soon as the property law obligations have been redeemed. The statute shall regulate the procedure and lay down the principles to be applied in redemption.

Article 12

(1) For the academic preparatory training of the clerics, the Catholic theological faculties shall persist at the universities in Breslau, Bonn and Münster and at the academy in Braunsberg. Their relationship with the ecclesiastical authority shall be governed in accordance with the rules applicable to the Catholic theological faculties in Bonn and Breslau.

(2) The Archbishop of Paderborn and the Bishops of Trier, Fulda, Limburg, Hildesheim and Osnabrück shall be entitled to possess a seminary in their bishoprics for the academic preparatory training of clerics. Instruction at these seminaries shall correspond to German theological instruction at higher education institutes just as it does to the ecclesiastical provisions. The named Diocesan Bishops shall give to the Prussian Minister of Science, Art and National Education notice of the rules and the curriculum of the seminaries. Only that clerics shall be appointed as teachers at the seminaries who have the corresponding qualification for teaching the subject to be represented in line with the demands of the German universities .

Article 13

The High Contracting Parties will settle any difference of opinion possibly occurring between them in future by interpreting a provision of this treaty in an amicable manner.

Article 14

(1) This treaty, whose German and Italian texts have equal binding force, shall be ratified, and the documents of ratification shall be exchanged in Berlin as soon as possible. It comes into force from the day of their exchange.

(2) At the same time as the coming into force of this treaty, the statutes and ordinances conflicting with its provisions shall become invalid.

Final Protocol⁸⁵ in re Article 4 Para 1 First Sentence

In calculating the dotation, the current status of the expenditures of the Prussian State has been used as a basis for comparable personal and material purposes. It is understood that in future any possibly occurring alterations thereto should be taken into consideration concerning the dotation *mutatis mutandis*.

Final Protocol in re Article 9 Para 1 (c)

Philosophical-theological studies completed at an Austrian state university shall have equal rights in accordance with the principles that will apply to other subjects relating to humanities.

Final Protocol in re Article 9 Para 3 First Sentence

This shall not give rise to a state right of objection.

⁸⁵ Note: The final protocol forms an "integral part of the concordat itself".

Final Protocol in re Article 12 Para 1 Second Sentence

The meaning of section 4 Nos. 1 and 2 of the Bonn and of section 48 (a) and (b) of the Breslau statutes is as follows:

Before anyone is to be employed or licensed to practice the teaching profession at a Catholic theological faculty, the competent bishop shall be heard as to whether he has to raise reasoned demurs to the teaching or the moral conduct of the person proposed. A person against whom such objections are raised shall not be employed or licensed.

The designation prior to employment (para 1), i.e. offering of the chair in question by the Minister of Science, Art and National Education, shall take place in confidential form and subject to a hearing of the Diocesan Bishop. At the same time, the bishop will be notified and asked for his statement, for which he will be given a sufficient period. In the statement, objections to the teachings and the moral conduct of the person proposed shall be pointed out; how far the bishop may go in this explication shall be entrusted to his dutiful discretion. The designation shall not be published until the bishop has declared to the minister that he has no demurs to the teachings or the moral conduct of the person designated.

If a teacher being a member of a Catholic theological faculty in his teaching or in writings offends the Catholic doctrine or commits a serious or vexing breach of the requirements of the priestly moral conduct, the competent bishop shall be entitled to inform the Minister of Science, Art and National Education of this. In such a case, the minister shall take remedial measures irrespective of the rights of the person concerned emerging from the employment in the civil service, and in particular shall find a replacement in line with the teaching requirement.

Final Protocol in re Article 12 Para 2 Fourth Sentence

Suitability shall be mainly proven by an academic thesis corresponding to the thesis for the habilitation: where this is of particular academic significance, the need to obtain a doctorate in theology may be waived.

3. Lower Saxony:

a) *Treaty between the Land of Lower Saxony and the Protestant Land Churches in Lower Saxony - Loccum Treaty (Vertrag des Landes Niedersachsen mit den Evangelischen Landkirchen in Niedersachsen [Loccumer Vertrag])*

of 19 March 1955 (Law and Ordinance Gazette of Lower Saxony [Nds. GVB1.] Sb. I p. 369)

The Land Government of Lower Saxony and the constitutional representatives of the Protestant Land Churches in Lower Saxony,

Conscious of the joint responsibility for the Protestant part of the Lower Saxon population and led by the desire to consolidate and promote the amicable relationship between the Land and the Land Churches, based on the fact that the Treaty between the Free State of Prussia and the Protestant Land Churches of 11 May 1931, as well as the appurtenant final protocol between the Land on the one hand and the Protestant-Lutheran Land Church of Hanover and the Protestant Reformed Church in North Western Germany on the other hand remains unchallenged valid, and in appreciation of that treaty as a step towards gaining the free order of

the relationship between the state and the church required by the German Constitution of 11 August 1919,

have in compliance as to the public assignment of the churches and their independence decided to develop the treaty further with adherence to the rights of the churches within the meaning of true free order and to formulate the uniform formation of the relationship of the Land towards all Land Churches as follows⁸⁶:

Article 1

(1) The Land of Lower Saxony shall grant statutory protection to the freedom of confession and the exercise of the Protestant faith.

(2) The Protestant churches shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall remain corporations under public law; their service shall remain civil service.

Article 2

(1) The Land Government and the church managements shall strive to have regular meetings to deepen their relations. They will at all times make themselves available to discuss questions concerning their mutual relationship.

(2) The churches will enter into close cooperation among themselves in order to uniformly represent their interests towards the state. They will appoint joint agents and establish an agency at the seat of the Land Government.

b) Treaty between the Land of Lower Saxony and the Non-denominational Religious Land Community of Lower Saxony (Vertrag zwischen dem Lande Niedersachsen und der Freireligiösen Landesgemeinschaft Niedersachsen)⁸⁷

of 8 June 1970 (Law and Ordinance Gazette [GVBl.] of Lower Saxony. p. 505)

The following treaty shall be concluded between the Land of Lower Saxony, represented by the Lower Saxon Prime Minister, and the Non-denominational Religious Land Community of Lower Saxony, corporation under public law, represented by its Presidium:

Section 1

(1) The Land shall ensure the Non-denominational Religious Land Community its free activity in the framework of the Basic Law of the Federal Republic of Germany for the free religious humanist care of its members and of other persons not belonging to a religious and ideological community.

(2) The Non-denominational Religious Land Community avows itself to the Basic Law of the Federal Republic of Germany and to the Temporary Lower Saxon Constitution. It shall exercise its activities in view of the common public welfare.

⁸⁶ Note: The printed articles are only an excerpt from the treaty.

⁸⁷ Note: The legal successor of the Non-denominational Religious Land Community of Lower Saxony is the Organisation of Free Humanists of Lower Saxony.

Section 2

The Land will continue to be deliberate that the instruction in the different religions⁸⁸ provided for in section 5 subsection 6 of the Lower Saxon Schools Act (Niedersächsisches Schulgesetz) at the public schools shall be given with equal rights in addition to religious instruction within the meaning of the Christian confessions. It shall in particular take care that those entitled to bring up the children, if they are concerned, shall be regularly referred to the instruction events coming into question.

Section 3

The Land shall in the sphere of university facilitate academic preparatory training for instruction in different religions. The teaching assignment issued at the Pedagogical University of Lower Saxony, Hanover department, for religious science and didactics of instruction in different religions shall remain.

Section 4

The Land shall with regard to broadcasting corporations in which it holds a share continue to be deliberate that the statutes contain provisions in accordance with which the Non-denominational Religious Land Community is given suitable on air times and that it is facilitated a suitable representation of its interests in questions of programming.

Section 5

The freedom of the Non-denominational Religious Land Community to act in adult education shall be ensured.

Section 6

The Non-denominational Religious Land Community and its communities shall be entitled to collect from its members for non-denominational and charitable purposes.

Section 7

(1) The Land shall pay to the Non-denominational Religious Land Community from the year 1970 onwards as an annual subsidy towards personnel costs the sum of one hundred thousand

⁸⁸ Note: Knowledge about the different religions is provided in the subject "Values and Standards" (ethics) in accordance with the Lower Saxon School Act (Niedersächsisches Schulgesetz) of 30.5.1974 (Nds. GVBl. p. 289), in the version of 3.3.1998 (Nds. GVBl. p. 137), last amended on 17.12.1999 (Nds. GVBl. p. 430), which is regulated in section 128 of the Lower Saxon School Act as follows:

Section 128 Instruction in Values and Standards

(1) Anyone not attending religious instruction shall be obliged instead to attend classes in values and standards if the school offers this instruction. This shall not apply to those for whom religious instruction of their religious community cannot be offered. The school shall offer instruction in values and standards as a part of the regular curriculum from the fifth year of school onwards if at least twelve pupils are obliged to attend.

(2) In the subject values and standards, knowledge about the different religions, an understanding of the moral concepts and standards applicable in society and access to philosophical, ideological and religious questions are to be imparted.

Deutsche Mark. The amount of the sum shall be adjusted to the changes in the remuneration of the Land civil servants, as in the case of comparable public subsidies.

(2) The public subsidy shall be paid on a quarterly basis with one quarter each of the annual amount being paid in advance.

(3) The Land Court of Audit shall be entitled to check the use of the financial support in situ, to inspect the required documentation and to require information.

4. Saxony-Anhalt:

Treaty between the Land of Saxony-Anhalt with the Jewish Community in Saxony-Anhalt (Vertrag des Landes Sachsen-Anhalt mit der Jüdischen Gemeinschaft in Sachsen-Anhalt) of 23 March 1994 (Law and Ordinance Gazette [GVBl.] of the Land of Saxony-Anhalt p. 795)

The Land of Saxony-Anhalt (hereinafter referred to as the Land), represented by the Prime Minister, Mr. Dr. Christoph Bergner, and the Jewish communities in Saxony-Anhalt, represented by the Land Association of Jewish Communities in Saxony-Anhalt, Mecklenburg-Western Pomerania and Brandenburg (hereinafter referred to as the Land Association), as well as the Land Association of Jewish communities in Saxony-Anhalt, Mecklenburg-Western Pomerania and Brandenburg (hereinafter for the Jewish contracting party: the Jewish Community in Saxony-Anhalt), represented by the statutory representatives,

- in responsibility before the history of Germany also shaped by the persecution and destruction of people of the Jewish faith and Jewish origin,
- in the knowledge of the measures of bare or hidden violence in the time of the Communist tyranny,
- conscious of the great loss suffered by the Land of Saxony-Anhalt through the destruction of Jewish life and Jewish culture,
- in the desire to make it easier for the Jewish Community in Saxony-Anhalt to rebuild a community life,

have agreed as follows for the territory of the Land of Saxony-Anhalt:

Article 1 Freedom of Faith and Independence

(1) The Land guarantees on the basis of its Constitution and of the Basic Law for the Federal Republic of Germany the unrestricted freedom of the Jewish faith, and grants statutory protection of the practice of religion.

(2) The Jewish congregations in the Land of Saxony-Anhalt and the Land Association shall regulate and administer their affairs in accordance with Jewish traditions and laws within the limits of the law applies to all.

Article 2 Coaction

(1) The Land Government and the Land Association shall regularly and where needed meet to discuss questions that are tangential to their relationship to each other or other questions which are of mutual interest.

(2) In intended law-making and manifestos in fields directly concerning the interests of the Jewish Community in Saxony-Anhalt, the Land Government shall suitably involve the Land Association.

(3) The Land will involve the Land Association in particular within the scope of work concerned with memorials where Jewish concerns are affected.

Article 3 Protection of the Jewish Community

The Land shall ensure the protection of the institutions of the Jewish Community in Saxony-Anhalt and shall promote the maintenance of historical sites.

Article 4 Holidays

The Land shall ensure the rights of indemnity contained in the Act on Sundays and Holidays (Gesetz über die Sonn- und Feiertage) of 22 May 1992 (GVBl. LSA p. 356) on Jewish holidays.⁸⁹

Article 5 Property Protection

In applying expropriation law provisions the Land and the municipal territorial authorities shall take account of the concerns of the Jewish Community in Saxony-Anhalt and where appropriate shall assist in acquiring indemnity land of equal value.

Article 6 Cemeteries

(1) The Land and the municipal territorial authorities will observe the intangibility of the authorised Jewish burial places that have not been abandoned.

(2) Jewish cemeteries shall enjoy the same state protection as municipal cemeteries. The Jewish communities shall have the right to establish new cemeteries within the framework of the legal provisions. When establishing new cemeteries, the Land and the local territorial authorities shall examine possibilities for promotion within the framework of the budgetary funds available.

(3) Within the framework of agreements between the Federation and the Länder, the Land shall grant subsidies for the maintenance and care of those Jewish cemeteries or parts thereof which cannot be reoccupied in accordance with the provisions of the community⁹⁰.

⁸⁹ Note: The wording of the referenced section 6 of the Act on Sundays and Holidays [of the Land of Saxony-Anhalt] of 22.5.1992 (GVBl. LSA p. 356), last amended on 16.12.1994 (GVBl. LSA p. 1044) is as follows:

Section 6 Release on Religious Holidays

(1) Members of a church or religious community in training or employment shall on application be granted unpaid release on the religious holidays of their confession unless opposed by operational necessities.

(2) In order to observe the religious holidays of their church or religious community, pupils shall obtain release from instruction on application.

⁹⁰ Note: This refers to the religious provisions of the Jewish communities.

Article 7 Preservation of Monuments

(1) The Jewish Community in Saxony-Anhalt undertakes to maintain and preserve buildings with a value as monuments together with the appurtenant real estates, as well as their works of art and culture where these obligations do not lead in an individual case to unacceptable strains on the Jewish community concerned or on the Land Association. The monument authorities shall with cultural monuments of the Jewish Community in Saxony-Anhalt which are intended to serve the purposes of religious services or other acts of worship to pay prior regard to the worship and religious concerns to be ascertained by the competent board. Prior to the implementation of measures, the authorities shall consult with the competent board.

(2) In allocating the Land funds for the preservation of monuments, the Jewish Community in Saxony-Anhalt will be suitably taken into consideration with due regard to the regulations of the Monument Protection Act. The Land shall advocate that the Jewish Community in Saxony-Anhalt also receives assistance from facilities active at national and international level for the preservation of culture and other monuments.

Article 8 Schools Beared by Jewish Organisations

(1) The Jewish Community in Saxony-Anhalt shall have the right to establish and operate general schools beared by Jewish organisations on a confessional basis.

(2) Detailed regulations of the procedure for governmental approval and recognition of such schools and their co-financing from public funds shall remain reserved to Land law.

Article 9 Own Educational and Social Facilities

The Jewish Community in Saxony-Anhalt shall have the right to maintain its own facilities in the educational and social fields, as well as in health care.

Article 10 Synagogue Gröbzig

The Contracting Parties shall advocate giving the only remaining synagogue building of this type in Germany in Gröbzig an enduring basis and to make it permanently accessible to the public.

Article 11 Culture Promotion

(1) The Contracting Parties shall strive to hold Jewish cultural festivals at intervals of three years preferably, where needed also in cooperation with other facilities and organisations.

(2) The Land shall support within the bounds of its possibilities the Jewish Community in Saxony-Anhalt in researching Jewish history and in dealing with German-Jewish heritage.

Article 12 Broadcasting

The Land shall work towards providing suitable on air times by the public broadcasting corporations to the Jewish Community in Saxony-Anhalt for broadcasting religious programmes. In the supervisory bodies (broadcasting councils, programme committees and comparable bodies) the Jewish Community in Saxony-Anhalt should be represented.

Article 13 Public Subsidy

(1) The Land shall pay to the Land Association a total subsidy (public subsidy). Over and above this public subsidy, further benefits shall only be effected to the Jewish Community in Saxony-Anhalt if they are provided for in this treaty or by the general statutes.

(2) The public subsidy shall be:

1991 DM 1,150,000

1992 DM 1,150,000

1993 DM 1,450,000

1994 DM 1,500,000.

(3) If subsequently the remuneration of civil servants in the service of the state changes, the public subsidy shall change *mutatis mutandis* on the basis of the amount agreed for 1994. The starting office for the higher, non-technical, general administrative service shall be taken as a basis, salary group A 13 of the Federal Remuneration Ordinance, 7th grade of seniority, two children.

(4) The public subsidy shall be paid monthly in advance to the Land Association in twelfths of the annual amount.

Article 14 Fees

The Land shall extend the remission of fees based on Land law for the Land to the Jewish Community in Saxony-Anhalt and its public-law institutions, foundations, associations and clubs.

Article 15 Parity

If the Land in treaties with other comparable religious communities should grant rights and benefits over and above those in this treaty, the Contracting Parties will examine together whether amendments to this treaty are required because of the principle of parity.

Article 16 Friendship Clause

The Contracting Parties will settle any difference of opinion occurring between them in future as to interpreting a provision of this treaty in an amicable manner.

Article 17 Linguistic Equation

Persons and function designations in this treaty shall apply equally in male and female forms.

Final Protocol⁹¹ in re Article 2 Para 1

(1) Compliance exists between the Contracting Parties that "regular meetings" signifies conventions which preferable are to take place once per year.

⁹¹ Note: The final protocol forms an integral part of the treaty.

(2) The Land Association shall inform the Land Government of vacancies in and new appointments as to the senior offices (e.g. Chairpersons of the Land Association and of the Jewish communities).

Final Protocol in re Article 2 Para 2

The "suitable" participation in intended law-making shall as a rule consist of a timely hearing before resolution by the Land Government on the introduction of the draft bill.

Final Protocol in re Article 3

Details shall remain reserved for special agreements.

Final Protocol in re Article 4

Jewish holidays are:

1. Rosh Hashanah (Jewish New Year) on the 1st and 2nd days, starting on the previous day at 4 p.m.
2. Yom Kippur (Day of Atonement), starting on the previous day at 4 p.m.
3. Sukkoth (Feast of Tabernacles) on the 1st and 2nd days, starting on the previous day at 5 p.m.
4. Shemini Azeret (Eighth Day of Sukkoth), starting on the previous day at 5 p.m.
5. Simchat Torah (Rejoicing of the Law), starting on the previous day at 5 p.m.
6. Pessach (Passover - exodus of the Jewish people from Egypt) on the 1st, 2nd, 7th and 8th days, starting on the previous day at 5 p.m.
7. Shavuoth (Feast of Weeks) on the 1st and 2nd days, starting on the previous day at 5 p.m.

The Land Association shall communicate the dates of the holidays to the Land Government two years in advance.

Final Protocol in re Article 5

(1) Accord exists that article 5 shall not give rise to a right to conveyance of state or municipal land, but to support in looking for indemnity land and - within the bounds of the legal possibilities- where appropriate preference in allocation of public real estates if there are several interested parties.

(2) If in the case of expropriation of Jewish corporations, a claim to compensation is asserted in the form of land, and if recognition of this claim depends on weighing up the interests of the public and of those concerned, the Land and municipal authorities will take into consideration that the protection of the property of the Jewish Community in Saxony-Anhalt is a priority. If hindrances exist in respect of other corporations with regard to the acquisition of real estate, these shall, as a rule, also apply to the Jewish Community in Saxony-Anhalt; no general special regulation is possible.

Final Protocol in re Article 6 Para 2

The Land shall strive that the municipal territorial authorities, where necessary, conclude agreements with the bearers of Jewish cemeteries on the erection or maintenance of cemetery buildings.

Final Protocol in re Article 11 Para 2

The provision shall refer primarily to political and organisational support; this shall not give rise to a right to financial promotion.

Final Protocol in re Article 12

This request has been accommodated for the Central German Broadcasting Corporation by section 14 subsection 3⁹² and section 19 subsection 1 No. 5, subsection 2⁹³ of the Treaty on the Central German Broadcasting Corporation of 30 May 1991 (Annex to the act of 25 June 1991, Law and Ordinance Gazette of the Land of Saxony-Anhalt [GVBl. LSA] p. 111) and for the German Television Channel II by article 3 section 11 para 3 and section 21 para 1 (f) of the Treaty on Broadcasting in the Unified Germany of 31 August 1991 (Annex to the act of 12 December 1991, GVBl. LSA p. 478)⁹⁴ and for the “Deutschlandradio” (Radio Germany) by article 11 para 3 first sentence⁹⁵ and article 21 para 1 (e)⁹⁶ of the Treaty on the Corporation

⁹² Note: The wording of the provision is as follows:

Section 14 [On Air Time for Third Parties]

(...)

(3) The Protestant churches, the Catholic Church and the Jewish communities shall be conceded if desired suitable on air times to broadcast religious programmes.

(...)

⁹³ Note: This provision contains the following directives:

Section 19 [Composition of the Broadcasting Council]

(1) The Broadcasting Council shall be composed of:

(...)

5. a member of the Jewish congregations from Saxony,

(...)

(2) In the cases falling under subsection 1 Nos. 3 to 5 and 10 to 15, the organisations and groups named therein may agree for the respective term of office of the Broadcasting Council a divergent Länder allocation. This may not change the number of members being apportioned to the respective Länder.

⁹⁴ Note: The named provisions are printed in the second part at item D No. 3.

⁹⁵ Note: The provision reads as follows:

Section 11 [Right to On Air Time]

(...)

(3) The Protestant churches, the Catholic Church and the Jewish communities shall if desired be granted suitable on air times for broadcasting religious ceremonies and celebrations, as well as other religious programmes, including those relating to matters of their public responsibility. (...)

(...)

⁹⁶ Note: The provision reads as follows:

under Public Law "Deutschlandradio" (Annex 1 to the act of 17 December 1993, GVBl. LSA p. 770, last amended by Treaty of 16.7.-31.8.1999, GVBl. LSA p. 364). In the event of amendments to the existing, and conclusion of new treaties on broadcasting, the Contracting Parties shall contact one another in advance concerning the consideration of the interests of the Jewish Community in Saxony-Anhalt.

Final Protocol in re Article 13 Para 1

The public subsidy shall be exclusively meant for the Jewish Community in the Land of Saxony-Anhalt. Accord exists that the public subsidy also covers subsidies for emerging communities and that the funds should flow proportionately to the communities, irrespective of their membership of the Land Association. Voluntary subsidies of the Land, for instance for the erection or maintenance of premises and facilities serving the purposes of worship, cure of souls and social tasks, shall not be ruled out by article 13.

Final Protocol in re Article 13 Para 3

The Contracting Parties agree that the escalator clause for the public subsidy shall apply from 1995, and shall become effective in the respective budget year.

Final protocol in re Article 13 Para 4

An examination of the use of the funds by state bodies shall not take place if the annual account is audited by an independent audit service.

5. Thuringia:

***a) Treaty of the Free State of Thuringia with the Protestant Churches in Thuringia
(Vertrag des Freistaates Thüringen mit den Evangelischen Kirchen in Thüringen)
of 15 March 1994 (Law and Ordinance Gazette of Thuringia [GVBl.] p. 509)***

The Free State of Thuringia, represented by the Thuringian Prime Minister,
and the Protestant-Lutheran Church in Thuringia,
the Protestant Church of the Church Province of Saxony,
the Protestant Church of Kurhessen-Waldeck,
the Protestant-Lutheran Land Church of Saxony,

Section 21 [Composition of the Radio Council]:

(1) The Radio Council shall be composed of forty members, namely

(...)

e) a representative of the Central Council of the Jews in Germany,

represented at each case by their representatives in accordance with the rules governing church life, belief, and worship:

- in the intention to preserve and safeguard the independence of the church and the principle of mutual independence of the state and the church, observing the basic right of religious freedom and of the church's public assignment,
- wishing to reach agreement on the exercise of the church's assignment in a state which is neutral in religious and ideological questions, and thereby to promote in particular the educational and cultural political as well as socio-charitable activities of the churches in the Free State of Thuringia,
- in consideration of and advancement of historically grown rights and duties,
- with the aim to put legal relations between the state and the church in a free constitutional system on a comprehensive, new basis and design it as such for the long term,

have declared as follows:

Article 1

(1) The Free State of Thuringia shall ensure the freedom to confess the Protestant faith and to exercise it in public.

(2) The churches shall regulate and administer their affairs independently within the limits of the law that is valid for all. They shall have the right to bestow their offices or remove from them without the participation of the state or the civil communities.

Article 2

(1) The Land Government and the churches will meet regularly for to discuss questions that are tangenting their relationship or other questions which are of mutual interest.

(2) They shall consult with each other in due time prior to making arrangements on matters significantly tangenting the interests of both sides, and shall make themselves available to discuss such questions.

(3) The churches shall inform the Land Government of vacancies in and new appointments as to the senior offices.

(4) The churches will enter into close cooperation among themselves in order to uniformly present their interests to the Free State of Thuringia. They shall appoint a joint agent at the seat of the Land Government for both this purpose and for the purpose of mutual information between the two bodies.

Article 3

(1) The Protestant theological faculty at the Friedrich Schiller University in Jena shall remain for the academic and theological training of clerics and teachers of religion. The Free State of Thuringia shall only undertake the new foundation of a Protestant theological faculty on consultation with the churches.

(2) Prior to appointing a professor, and before the permanent appointment of either a university lecturer of a special branch of Protestant Theology or Pedagogics of Religion at a university of the Free State of Thuringia, the churches shall be given the opportunity to express their views.

If reservations relating to church doctrine and confession are expressed and substantiated in detail, the Land Government will take this statement into consideration.

(3) Doctoral study and habilitation rules, examination rules for the subject of Protestant Theology and examination rules for obtaining the authorisation to teach the subject of Protestant Religion at all types and levels of school shall be approved with the aim of reaching an amicable understanding on consultation with the churches.

(4) The churches shall retain the right to establish their own examination offices for the conclusion of academic theological training. The effects of the ecclesiastical examinations in the sphere of the state shall be in line with the statutory provisions.

(5) The Protestant university preacher shall be an ordained member of faculty nominated by the locally competent Church Government in accordance with the Protestant theological faculty.

Article 4

State recognition of ecclesiastical universities shall be in line with statutory provisions.

Article 5

(1) Protestant religious instruction constitutes a part of the regular curriculum in state schools.

(2) Irrespective of the state's right of supervision, the churches shall have the right to ascertain by means of inspection, in accordance with a procedure agreed upon with the state school inspectorate, that the content and composition of religious instruction correspond with the fundamental principles of the churches.

(3) Guidelines, curricula and teaching books for Protestant religious instruction shall be determined in accordance with the churches.

(4) The required number of teachers with ecclesiastical authorisation (vocatio) shall be appointed to schools in order to ensure that religious instruction is provided. The availableness of ecclesiastical teaching staff for religious instruction shall be made easier by a separate agreement.

(5) The giving of Protestant religious instruction shall require the vocatio of the competent church. The church may revoke the authorisation in well-founded cases. It shall communicate the revocation to the state school inspectorate. With Revocation the right to give religious instruction comes to an end.

(6) The Free State of Thuringia shall ensure the academic preparatory training for Protestant Theology and Pedagogics of Religion in the sphere of universities within the framework of the studies for obtaining the qualification for the teaching profession.

Article 6

(1) The right to establish schools beared by ecclesiastical organisations shall be ensured.

(2) The Free State of Thuringia shall recognise and suitably promote schools beared by ecclesiastical organisations within the limits of state statutes.

Article 7

(1) The churches, the parishes and the associations formed therefrom constitute corporations under public law; their service is civil service.

(2) The churches will communicate resolutions relating to the formation of and alterations to their parishes and the associations formed therefrom to the competent ministry. The establishment of public law ecclesiastical institutions and foundations shall require the approval of the competent ministry.

(3) The provisions of the churches regarding pecuniary representation of the ecclesiastical corporations, institutions and foundations under public law shall be submitted to the competent ministry. The ministry may raise objections if proper pecuniary representation is not ensured. The objection shall be admissible for two months from the date of submission. The competent High Administrative Court shall decide on the objection in response to an action filed by the church.

Article 8

(1) The property and other real rights of the churches and their religious associations shall be ensured in accordance with article 140 of the Basic Law for the Federal Republic of Germany in conjunction with article 138 para 2 of the German Constitution of 11 August 1919 (Weimar Constitution).

(2) In applying expropriation law provisions, the Land authorities shall take account of the concerns of the churches. If the churches or their religious associations in cases of expropriation or conveyance of church real estates intend to acquire indemnity land of equal value, the Land authorities will accommodate them within the limits of statutory provisions.

Article 9

(1) Within the bounds of their possibilities the churches undertake to maintain and preserve buildings and the appurtenant real estates, as well as works of art and objects of worship classified as historical monuments. They will effect alienations and alterations only on consultation with the state monument authorities aiming at reaching an understanding with them, and will take care that the parishes and other church associations act accordingly.

(2) In allocating the funds of the Free State of Thuringia for the preservation of monuments, the churches shall be suitably taken into consideration. The Free State of Thuringia shall advocate that the churches also receive assistance from facilities active at national and international level for the preservation of monuments.

(3) Where the treasury regulation (Schatzregal)⁹⁷ is applied, these cultural monuments shall be entrusted to the churches on application as a long-term loan.

Article 10

(1) For state real estates and buildings devoted to ecclesiastical or charitable purposes, this devotion and the duty of the Free State of Thuringia to maintain buildings shall persist until conclusion of agreements in accordance with para 2.

(2) The Free State of Thuringia and the churches shall enter into negotiations as soon as possible on conveyance of the ownership of such real estates and buildings to the churches and on final regulations on the public easement.

⁹⁷ Note: The German term “Schatzregal” characterises the state’s claim to ownership of treasury troves being movables and having a tangible or scientific value.

Article 11

- (1) The state rights of patronage existing in the Free State of Thuringia shall be abolished.
- (2) Regarding the previous united church offices and boards of education, the Contracting Parties shall work towards the swift conclusion of the necessary partition agreements by both the municipal territorial authorities and the parishes and any other ecclesiastical divisions possibly concerned or towards the execution of the agreements which have already been concluded.

Article 12

- (1) In state hospitals and correctional facilities, as well as other public institutions of the Free State of Thuringia in which cure of souls is customary, the churches shall be approved for religious services and cure of souls. If in these facilities the need exists for regular religious service and cure of souls, the Free State of Thuringia shall make sure that suitable premises shall be provided in the available buildings.
- (2) Within the corresponding facilities of other bearers, the Free State of Thuringia, within the bounds of its legal possibilities, will work towards enabling corresponding pastoral care to take place.

Article 13

- (1) Instead of the dotations previously paid for church governmental purposes and subsidies for purposes of pastors' stipends and maintenances, instead of all performances in money and in kind based on state public easement obligations as to buildings owned by the churches, and instead of all other payments based on older legal titles, the Free State of Thuringia shall pay to the churches an annual total subsidy (public subsidy). The churches shall release the Free State of Thuringia from all obligations to provide performances in money and in kind to the parishes, in particular from public easement obligations. Over and above the public subsidy, further benefits shall be made to the churches and their parishes only if they are provided for in this treaty or the general statutes.
- (2) The public subsidy shall be in 1994
DM 100,000 in settlement of the public easement,
DM 18,240,000 in settlement of all other older titles.
- (3) If after 1 January 1994 the remuneration of civil servants in the service of the state changes, the public subsidy shall change mutatis mutandis on the basis of the amount agreed for 1994. The starting office for the higher, non-technical, general administrative service shall be taken as a basis, salary group A 13 of the Federal Remuneration Ordinance, 7th grade of seniority, married, two children.
- (4) Over and above this, from 1995 to 1998 an increase shall take place in respect of the public subsidy in settlement of public easement amounting to DM 275,000 per year.
- (5) The public subsidy shall be subdivided among the churches by agreement between the churches. The competent ministry shall be informed of the agreement.
- (6) The public subsidy shall be paid with one-twelfth of the annual amount, at each case monthly in advance to the churches, in consideration of the agreement in accordance with para 5.

(7) Article 140 of the Basic Law in conjunction with article 138 para 1 of the Weimar Constitution shall apply to redemption of the public subsidy.

Article 14

(1) The churches and parishes shall be entitled to levy church taxes on the basis of tax rules, in accordance with the provisions of Land law, in particular also church dues. The church tax rules and the church tax resolutions, including their amendments and supplements, shall require state recognition.

(2) The churches shall agree on assessment of the church tax as surtax to income tax (wage tax) to a uniform surtax rate, when levying a minimum contribution of church tax as well as with regard to church dues in inter-faith marriages, they shall agree on uniform amounts.

(3) The churches will inform the competent ministry of their church tax resolutions and their amendments and supplements without delay; church tax resolutions shall be deemed to have been recognised if they correspond to the recognised resolutions of the previous budget year.

Article 15

(1) On application of the churches, the competent ministry has to transfer the administration of the recognised Land Church taxes to the revenue offices. In Thuringian plants where income tax is levied by reduction from wages, the employers shall be placed under the obligation of both collecting and paying also the church tax in accordance with the recognised rate.

(2) The Free State of Thuringia shall receive emolument for the administration of the church tax the amount of which shall depend on the church tax revenues that have been taken in. It shall be separately agreed as an annual percentage. The revenue offices shall be obliged to provide information to the competent ecclesiastical bodies in all church tax matters as far as is possible with regard to the documents available and within the limits of reasonable administrative effort, taking account of data protection.

(3) The execution of church taxes shall be transferred to the revenue offices on application of the churches or, if the municipal territorial authorities agree, to the latter.

Article 16

(1) The churches and their parishes shall be entitled to ask their members irrespective of church taxes and church dues for voluntary contributions and other voluntary performances for church purposes.

(2) For the churches and their charitable facilities, furthermore, two general public house and street collections for ecclesiastical purposes per year shall be approved. The dates of these collections shall be set in agreement with the competent Land authority.

Article 17

Remission of fees based on Land law for the state shall also apply to the churches, their parishes and their public law institutions, foundations and associations.

Article 18

The churches shall participate in adult education with their own facilities. The latter shall be included within the limits of the applicable provisions in the financial promotion of adult education by the Free State of Thuringia.

Article 19

The churches and their charitable works shall have the right to maintain in the educational and social field, as well as in health care, care and counselling services for special target groups. Promotion of these facilities shall take place in accordance with the statutes.

Article 20

The protection of Sundays and state-recognised ecclesiastical holidays shall be ensured.

Article 21

The statutory provisions in accordance with which clerics, their assistants and persons, while being trained for their profession participate in this professional activity, are entitled to refuse to give evidence on what is entrusted to them or becomes known to them in their capacity as spiritual advisers shall remain unaffected. The Free State of Thuringia shall stand for the preservation of this protection of the seal of confession and the secrecy regarding cure of souls.

Article 22

- (1) Church cemeteries shall enjoy state protection.
- (2) The burial of non-believers or of those of a different faith on church monopoly cemeteries shall be ensured.
- (3) Rules for use and schedules of fees for church cemeteries shall require the approval of the authorities competent for burials. Cemetery fees shall be collected in the administrative executory procedure on application of the ecclesiastical body holding this right. The Free State of Thuringia shall determine the competent law enforcement authorities. The uncollectible administrative costs and expenses caused by enforcement measures shall be refunded by the ecclesiastical bearer.

Article 23

(1) Within the framework of the programming mandate regulated by law, the Free State of Thuringia will work towards both the programmes of the public broadcasting corporations and the full programmes of private broadcasting corporations are paying regard to the life of the Protestant Church suitably.

(2) Land law provisions in accordance with which:

1. the public broadcasting corporations, as well as the private broadcasters of full programmes have to concede to the churches on request suitable on air time to broadcast religious programmes, this where appropriate on refund of their prime costs,
2. all broadcasters must respect in their programmes the dignity of man and the moral, religious and ideological convictions of others

shall sustain.

(3) The churches shall be represented in accordance with the statutory provisions in the supervisory bodies of the public broadcasting corporations, as well as the Land Corporation for Private Broadcasting.

(4) The right of the churches to operate private broadcasting in accordance with the statutory provisions or to take a holding in private broadcasting corporations shall remain unaffected.

Article 24

(1) The data from the registration register needed by the churches in order to carry out their tasks shall be transmitted to them in accordance with the statutory provisions. The Free State of Thuringia shall advocate that the necessary possibilities of collection and transmission of data remain therefor.

(2) Transmission of data shall require that sufficient data protection precautions have been taken by the churches.

Article 25

(1) In proceedings before the ecclesiastical courts and in formal disciplinary proceedings against clerics and church officials, the ecclesiastical courts and Disciplinary Courts shall be entitled to place witnesses and experts under oath.

(2) Proceedings concerning complaints about teaching shall be excluded therefrom.

Article 26

The Contracting Parties shall resolve differences of opinion possibly occurring between them concerning the interpretation of this treaty in an amicable manner.

Article 27

(1) This treaty shall be ratified, and the documents of ratification shall be exchanged in Erfurt.

(2) This treaty comes into force from the day after this exchange is made.

In witness thereof, this treaty has been signed in five originals. Each Contracting Party shall receive an original text.

Done in Erfurt on 15 March 1994

Final Protocol in re Article 2 Para 1

”Regular discussions” signifies conventions which preferable are to take place once per year.

Final Protocol in re Article 2 Para 4

Persons and function designations in this treaty shall apply equally in male and female forms.

Final Protocol in re Article 3 Para 1

Compliance exists that the guarantee of continuance of the Protestant-Theological Faculty of Friedrich Schiller University in Jena is bound to pastor training also in future taking place quite predominantly in the form of theological studies at the state universities and the existing theological universities (Bethel, Neuendettelsau and Wuppertal).

Final Protocol in re Article 3 Para 2

The statement of the churches shall be called for by the competent ministry after the proposal for appointment and the person to be designated to be appointed has been determined. For this the Land Government shall approach the Church Government of the church in the area of which the university has its seat. Coordination within the church shall be the affair of this Church Government. If no statement has been submitted within six weeks of receipt of the call, it shall be presumed that the churches will not express any reservations.

If the Land Government in spite of reservations submitted in time intends to continue the appointment procedure for the selected person, reservations shall be discussed with representatives of the faculty and the Church Government with the aim of reaching an agreement.

Final Protocol in re Article 4

Currently, sections 113 to 116 and 128 of the Thuringian Act on Universities (Thüringer Hochschulgesetz) of 7 July 1992⁹⁸ shall be decisive.

Final Protocol in re Article 7 Para 1

The Contracting Parties shall be guided by the fact that a change from the church to the state service and vice versa has no incongruous disadvantages as a consequence of the application of the provisions of service law.

Final Protocol in re Article 8 Para 2

In case of loss of property by virtue of expropriation prior to 3 October 1990, the claims shall be in line with the statutory provisions.

Final Protocol in re Article 9 Para 1

With objects devoted to religious service (res sacrae) religious concerns shall be taken into consideration as a matter of prime importance. If state preservation of monuments and liturgical interests of the churches come into conflict, the liturgical concerns shall take priority

Final Protocol in re Article 12 Para 1

”Customary” shall refer to a practice which has developed itself on the basis of article 141 of the Weimar Constitution^{99, 100}. Multi-purpose premises shall also be suitable.

⁹⁸ Note: Sections 113 to 116 govern the preconditions for state recognition of an educational establishment as a university, the recognition procedure, the legal impact of and loss of recognition. Section 128 stipulates that the treaties with the churches are unaffected by this act.

⁹⁹ Note: Article 141 of the Weimar Constitution is printed in the first part, at item A.

¹⁰⁰ Note: In practice, cure of souls in establishments within the meaning of the article 141 the Weimar Constitution in addition to cure of souls in public hospitals and correctional facilities also includes cure of souls in the whole Federal Armed Forces (army, navy and airforce), in the Federal border police, in the police and on municipal cemeteries.

Details may be regulated by a special agreement. The Contracting Parties agree that no legal claim for the conclusion of an agreement can be derived from this .

Final Protocol in re Article 13 Para 6

Proof of the use of the funds shall not be required.

Final Protocol in re Article 14 Para 3

If a major change occurs in matters determining the level of church tax, the competent ministry shall call the attention of the churches to the need to adjust the rate of assessment for church tax, explaining the reasons in writing and shall conduct negotiations with the aim of reaching an agreement. The fiction of approval shall then fall away on expiry of the budget year following the year of receipt of the letter.

Final Protocol in re Article 15 Para 2

The churches shall ensure keeping of the tax secrecy in accordance with the state provisions issued to protect it.

Final Protocol in re Article 17

For official acts carried out by private enterprises (charged with specific sovereign functions in the public interest) on the basis of a statute there shall be no exemption from fees for the churches either.

Final Protocol in re Article 20

The Free State of Thuringia shall make statutory regulations in order to ensure the protection of religious services on church holidays that are not legal holidays.

Final Protocol in re Article 22 Para 2

This warranty shall be made on condition that the provisions applying to cemeteries, in particular those on using burial grounds, on the duration of occupancy and possible change of purpose will be recognised.

Final Protocol in re Article 22 Para 3

Compliance exists that governmental approval of the rules for use may only be refused for reasons of police law, especially related to building-code provisions and law on epidemics.

Final Protocol in re Article 23 Para 2

Religious programmes shall not be restricted to broadcasting religious ceremonies or liturgical acts.

Final Protocol in re Article 24

The determination that sufficient data protection is ensured shall be taken by the competent ministry on the basis of the provisions of the canon law to be submitted by the churches.

Final Protocol in re Article 25 Para 1

The person putting someone on oath must be qualified as a judge in accordance with the German Judiciary Act. This shall not apply to the presidents of the ecclesiastical courts who are in office upon coming into force of this treaty.

Final Protocol in re Article 26

If the Free State of Thuringia in treaties with other comparable religious communities should grant rights and benefits over and above those in this treaty, the Contracting Parties will examine together whether amendments to this treaty are required because of the principle of parity.

Final Protocol in re Article 27 Para 2

Compliance exists that all provisions possibly still remaining applicable that are binding on the Contracting Parties from the period prior to 3 October 1990 shall be replaced by this treaty.

***b) Treaty between the Holy See and the Free State of Thuringia
(Staatsvertrag zwischen dem Heiligen Stuhl und dem Freistaat Thüringen)
of 11 June 1997 (Law and Ordinance Gazette of Thuringia [GVBl.] p. 266)***

The Holy See and the Free State of Thuringia, being of one mind in the desire to consolidate and promote in amicable spirit the relationship between the Catholic Church and the Free State of Thuringia, have decided to reach an convention with the aim in mind to develop and regulate in a permanent manner the legal position of the Catholic Church in the Free State of Thuringia, in consideration of the applicable Concordat between the Holy See and the German Reich of 20 July 1933 to the degree that it is binding on the Free State, and in appreciation of the Treaty between the Free State of Prussia and the Holy See of 14 June 1929.

For this purpose, the Holy See, represented by its plenipotentiary, the Apostolic Nuncio in Germany, Dr. Giovanni Lajolo, Titular Archbishop of Cesariana, and the Free State of Thuringia, represented by the Thuringian Prime Minister, Dr. Bernhard Vogel, have agreed to the following articles:¹⁰¹

Article 1

(...)

(3) Clerics, religious and other members of the church called to an office or religious service shall enjoy the protection of the state in the performance of their official duties.

(4) In the Free State of Thuringia, clerics and religious shall be free from the obligation to assume public offices and responsibilities not compatible with their position in accordance with the provisions of canon law.

¹⁰¹ Note: The articles of the treaty that have not been printed correspond to those of the previous Treaty between the Free State of Thuringia and the Protestant Churches in Thuringia.

Article 4

The current diocesan organisation and circumscription of the Catholic Church in the Free State of Thuringia persists. Alterations shall require a treaty unless borders are shifted merely in the interests of local cure of souls.

Article 5

(1) The appointment of the Episcopal See of Erfurt shall take place in accordance with article 3 of the Treaty between the Holy See and the Free State of Thuringia on the Establishment of the Bishopric of Erfurt of 14 June 1994 in conjunction with article 6 of the Treaty between the Free State of Prussia and the Holy See of 14 June 1929.

(2) Article 6 of the Treaty of the Free State of Prussia with the Holy See of 14 June 1929 shall apply to the appointment of the Episcopal See of Fulda. As to the Episcopal See of Dresden-Meißen, the arrangement made in article 111 para 1 of the Baden Concordat of 12 October 1932 in conjunction with article 14 para 1 second sentence of the Concordat between the Holy See and the German Reich of 20 July 1933 shall apply. In the case of the appointment of the Episcopal See of Fulda, the Chapter of the Cathedral shall address the enquiry as to whether reservations of a general political nature exist, also to the Prime Minister of the Free State of Thuringia. In the case of the appointment of the Episcopal See of Dresden-Meißen the corresponding enquiry shall come from the Holy See.

(3) In the Bishopric of Erfurt, a cleric shall be appointed the local ordinary, Auxiliary Bishop, Vicar-General, a member of the Chapter of the Cathedral, Cathedral Locum Tenens, a member of a diocesan authority or head or teacher of the diocesan educational establishment only if he:

1. is a German citizen,
2. has a school-leaving certificate entitling to study at a German university,
3. has completed at least three years of philosophical-theological studies at a German state university, Episcopal seminary for academic preparatory training of clerics, or a papal university in Rome.

(4) With church and governmental approval, the requirements named in subsection 3 Nos. 1 to 3 may be waived; in particular studies at other German-language universities than those named in No. 3 may be recognised.

(5) At least two weeks prior to the intended appointment of a cleric in the Bishopric of Erfurt as Auxiliary Bishop, Vicar-General, and a member of the Chapter of a Cathedral or a head teacher or teacher at the diocesan seminary, the competent ecclesiastical body shall give the competent ministry notice of this intention and of the personal particulars of the cleric in question.

(6) In the event of a hindrance or of a vacancy in an Episcopal see, the Chapter of a Cathedral concerned shall communicate the name of that person who has temporarily assumed management of the Diocese to the Prime Minister.

(7) Diocesan Bishops shall make at least the demands made in para 3 Nos. 1 to 3 of clerics to whom an incumbency is to be permanently transferred and those demands named in Nos. 1 and 2 of the other clerics to be employed in parish cure of souls. Para 4 shall apply *mutatis mutandis* for the rest.

Article 6

(...)

(2) Religious orders and religious confraternities formed in accordance with canon law, as well as ecclesiastical institutions and foundations, shall be recognised in their canonical legal status. Institutions and foundations shall acquire the nature of public-law organisations with their own juridical personality in accordance with guidelines to be agreed with the Diocesan Bishops. Those religious orders and religious confraternities, as well as ecclesiastical institutions and foundations to whom public law status is not due, shall acquire legal capacity in accordance with the provisions of civil law.

Article 7

(1) The bishoprics shall communicate resolutions relating to the formation and alteration of ecclesiastical corporations under public law to the competent ministry, and shall submit a copy of the document of organisation.

(2) Ecclesiastical corporations shall acquire legal capacity by virtue of being established by the competent Diocesan Bishop. The document of establishment shall be published in the State Gazette for the Free State of Thuringia. Publication shall be induced at the request of the bishopric concerned by the competent ministry.

(3) The same shall apply *mutatis mutandis* to the commutation, combination and dissolution of these corporations.

Article 11

(1) Where the Catholic Church in the Free State of Thuringia in the framework of a diocesan seminary (article 6 of the Treaty between the Holy See and the Free State of Thuringia on the Establishment of the Bishopric of Erfurt of 14 June 1994) provides academic preparatory training for clerics, instruction shall correspond both to the ecclesiastical provisions and to the standard of theological instruction at German academic universities.

(2) The competent Diocesan Bishops will give the competent ministry notice of the pertinent rules and the curriculum. Only that clerics or other instructors shall be appointed as teachers for academic preparatory training of clerics who have the corresponding qualification for teaching the subject to be represented in line with the demands of the German academic universities.

(3) Article 10 para 2 of this treaty shall apply to state recognition of the facility of academic preparatory training of the clerics.

Article 13

(1) The Free State of Thuringia shall ensure within the framework of the studies for obtaining the qualification for the teaching profession the academic preparatory training in Catholic Theology and Pedagogics of Religion. Details shall remain reserved for special agreements.

(2) With the First State Examination for the teaching profession, it will be ensured that a representative of the competent bishop shall be invited to the oral examination in the subject of Catholic Religion. The authorisation to teach Catholic religious instruction shall be issued by the Free State of Thuringia.

(3) With the Second State Examination for the teaching profession, it will be ensured that the examiner in the oral examination in the subject of Catholic Religion has a church authorisation in addition to the authorisation to teach Catholic Religion.

(4) Para 2 applies to all extension, supplementary and additional examinations analogously.

(5) The competent ministry shall take its decisions regarding study and examination rules for training teachers of religion in the subject of Catholic Religion after having consulted with the bishoprics with the aim of reaching an amicable understanding.

Article 15

The right of the church and its charitable facilities to be active in the social field shall be recognised by the Free State of Thuringia. The promotion of these facilities takes place in accordance with the statutes.

Article 21

(1) The provisions of the bishoprics regarding the pecuniary representation of the ecclesiastical corporations, independent institutions and independent foundations under public law shall be submitted to the competent ministry prior to being issued. The provisions will ensure proper representation of the institutions in question.

(2) (...) The bishoprics are bound in the event of an objection to examine the provisions in question.

(3) The ecclesiastical provisions regarding pecuniary representation of the institutions named in para 1 will be published in the State Gazette for the Free State of Thuringia and in the official gazettes of the bishoprics. Publication in the State Gazette will be induced at the request of the competent ecclesiastical bodies by the competent ministry. The same shall apply mutatis mutandis to provisions relating to a reservation of approval of higher ecclesiastical authorities and other ecclesiastical provisions regarding the law on the administration of property if their publication serves the interest of security in legal relations.

Article 30

Regulations in this treaty and in the Treaty between the Holy See and the Free State of Thuringia on the Establishment of the Bishopric of Erfurt of 14 June 1994 shall precede regulations whose content is different or in concordance in older concordats, as far as they concern the same subject-matter.

Article 31

The Contracting Parties shall resolve differences of opinion occurring between them concerning the interpretation or execution of this treaty in an amicable manner.

Final Protocol¹⁰² in re Article 4

The present diocesan organisation and circumscription of the Catholic Church in the Free State of Thuringia shall for the Bishopric of Erfurt be in line with the Treaty between the Holy See

¹⁰² Note: The final protocol is an part of the treaty.

and the Free State of Thuringia on the Establishment of the Bishopric of Erfurt of 14 June 1994; for the Bishopric of Dresden-Meißen in line with the Apostolic Constitution "*Solicitudo omnium Ecclesiarum*" of 24 June 1921; for the Bishopric of Fulda in line with article 2 of the Treaty between the Free State of Prussia and the Holy See of 14 June 1929 in conjunction with the Treaty between the Holy See and the Free State of Thuringia on the Establishment of the Bishopric of Erfurt of 14 June 1994.

Final Protocol in re Article 5 Para 1 and 2

(1) It is understood that where any reservations of a general political nature exist, such shall be raised as soon as possible. If after 20 days have elapsed, no such declaration has been submitted, the Holy See will be entitled to presume that there are no reservations regarding the candidate. Full confidentiality will be maintained regarding the personalities in question until the publication of the appointment. This shall not give rise to a veto power of the state.

(2) Article 5 para 2 shall apply so long no other agreement is reached.

Final Protocol in re Article 5 Para 3

Philosophical-theological studies completed at an Austrian state university or at a German-language Swiss university shall be recognised as having equal rights in accordance with the principles applying to other subjects relating to humanities.

Final Protocol in re Article 5 Para 4

In the case of para 3 No. 1, it shall be deemed that the governmental approval has been granted.

Final Protocol in re Article 5 Para 5 and 6

This shall not give rise to a state right of objection.

Final Protocol in re Article 6 Para 2

So long as an agreement has not been reached concerning the guidelines, the previous legal position shall persist. Where legal status under public law has been due to religious orders and religious confraternities in the past, they shall be conceded this status again for the future by the Free State of Thuringia; the ecclesiastical organisations concerned shall provide appropriate proof.

Final protocol in re Article 11 Para 2

(1) Where the Free State of Thuringia in accordance with the Holy See establishes a Catholic theological faculty or a Catholic theological department at a state university, the Diocesan Bishops shall forego exercising the right to establish or maintain their own facility for academic preparatory training of the clerics. The right to establish or maintain seminaries for candidates for Roman Catholic priesthood shall remain unaffected thereby.

(2) The Contracting Parties agree that supplementary agreements shall be reached prior to the intended new foundation of a Catholic theological faculty at the University of Erfurt.

Final Protocol in re Article 13 Para 1

Academic preparatory training in Catholic Theology and Pedagogics of Religion for obtaining the qualification for the teaching profession concerning the subject of Catholic Religion is currently operated by Philosophical-Theological Studies Erfurt. The cooperation agreements between the Philosophical-Theological Studies Erfurt on the one hand and the Pedagogical University of Erfurt respectively the Friedrich Schiller University of Jena on the other are currently decisive therefor. Training in Catholic Theology and Pedagogics of Religion corresponds to the doctrines and principles of the Catholic Church.

Final Protocol in re Article 13 Para 5

(1) The competent ministry shall not issue examination rules for the teaching profession concerning the subject of Catholic Religion until, after by enquiry to the competent Diocesan Bishops, it has been determined that it has not been demurred as to compliance with the constitutionally guaranteed principles of the Catholic Church and with the ecclesiastical requirements of training of teachers of religion. Demurs shall be raised as immediately as possibly, at the latest upon the expiration of four months.

(2) The ministry will require an amendment to the study rules in the subject of Catholic Theology and Pedagogics of Religion if it has been determined by an enquiry - as immediate as possibly - with the Diocesan Bishops that it has been demurred as to compliance with the constitutionally guaranteed principles of the Catholic Church and with the ecclesiastical requirements of training of teachers of religion. Demurs shall be raised as immediately as possibly, at the latest upon the expiration of four months.

(3) The ecclesiastical requirements of training for teachers of religion ensue at the time of the conclusion of this treaty from Decree No. 234/787 B of the Congregation for the Catholic Educational System of 1 January 1983 and the "Ecclesiastical Requirements as to Courses of Study for the Teaching Profession concerning Catholic Religion" of the German Bishops' Conference of 23 September 1982.

(4) The bishoprics shall assure that they submit a uniform vote.

Final Protocol in re Article 21 Para 3

(1) The Free State of Thuringia takes note of the fact that as canon law of the ecclesiastical administration of property, the following currently applies

- in the area of the Bishopric of Erfurt: the Ecclesiastical Act on Administration of the Catholic Church Property in the Area of the Bishopric of Erfurt of 30 March 1996 (State Gazette for the Free State of Thuringia No. 35 of 2 September 1996 pp. 1647-1651 = Official Church Gazette for the Bishopric of Erfurt No. 5 of 2 May 1996);
- in the area of the Bishopric of Fulda the Church Property Administration Act of 20 April 1979, published in the Hessen State Gazette 28/79, pp. 450 et seqq. with amendments of 12 December 1995, published in the Hessen State Gazette 3/96, pp. 216 et seq. in accordance with The Introductory Act to the Church Property Administration Act for the Thuringian Part of the Bishopric of Fulda of 30 September 1996 (State Gazette for the Free State of Thuringia No. 7 of 17 February 1997 pp. 359-365 = Official Church Gazette for the Diocese of Fulda of 31 January 1997, item II, No. 17, p. 7);
- in the area of the Bishopric of Dresden-Meißen the Proclamation on the Establishment of the Roman Catholic Church and its Authorities in the Bishopric of Meißen of

29 November 1922 (Official Church Gazette for the Bishopric of Meißen No. 1 of 1 January 1923, p. 1) and the Proclamation of the Saxon Ministry of National Education of 30 December 1931 (Saxon State Gazette No. 1 of 2 January 1932, p. 5 = Official Church Gazette for the Bishopric of Meißen No. 1 of 1 January 1932, p. 9).

(2) The Free State of Thuringia does not file an objection against the temporary further application of the provisions issued for the Bishoprics of Fulda and Dresden-Meißen. They are promulgated once more by way of precaution in the State Gazette for the Free State of Thuringia (No. 32/1994, pp. 2178 - 2184) referring to their application as canon law.

(3) The Free State of Thuringia clears up that the Prussian Act on the Administration of the Catholic Church Property of 24 July 1924 (Prussian Law Collection 1924, p. 585) as state law also in the formerly Prussian parts of the Free State of Thuringia no longer applies; hence, also the provisions therein contained regarding the state rights of supervision, participation and approval cease.

(4) The Catholic Church undertakes to bring about within three years after coming into force of this treaty an ecclesiastical regulation regarding the administration of property which is as uniform as possible for the whole Free State of Thuringia.

Final Protocol in re Article 30

As for the rest, compliance exists between the Contracting Parties that - also to the degree that the Concordat between the Holy See and the German Reich of 20 July 1933 is binding on the Free State of Thuringia - the provisions of that concordat regarding requirements of clerical superiors of religious orders (article 15 para 2 first sentence and para 3) and denominational schools (articles 23 and 24) as well as the provisions of article 32 of this concordat shall not be applied in the relationship between the Holy See and the Free State of Thuringia.

Final Protocol in re Article 31

If the Free State of Thuringia in treaties with other comparable religious communities should grant rights and benefits over and above those in this treaty, the Contracting Parties will examine together whether amendments to this treaty are required because of the principle of parity.

**6. State-Church Treaty in the Special Field of Military Chaplaincy
(Staatskirchenvertrag auf dem Spezialgebiet der Militärseelsorge)¹⁰³**

Treaty of the Federal Republic of Germany with the Protestant Church in Germany to Regulate Protestant Military Chaplaincy (Vertrag der Bundesrepublik Deutschland mit der Evangelischen Kirche in Deutschland zur Regelung der Evangelischen Militärseelsorge)¹⁰⁴
of 22 February 1957 (Federal Law Gazette [BGBl.] Part II p. 701)

The Federal Republic of Germany and the Protestant Church in Germany

in the endeavour to ensure free religious activity and the exercise of cure of souls in the Federal Armed Forces, conscious of the joint responsibility for this task and in the desire to reach a formal convention on regulating Protestant military chaplaincy,

have agreed to the following articles:

Part I: Principles

Article 1

Permanent Protestant military chaplaincy will be established for the Federal Armed Forces.

Article 2

(1) Military chaplaincy as a part of the work of the church will be exercised on behalf of and under the supervision of the church.

¹⁰³ Note: Cure of souls in hospitals is currently only governed in the shape of basic intra-church (Protestant and Catholic) rules and guidelines. Cf. e.g. Guidelines for Cure of Souls in Hospitals in the Protestant Church in Hessen and Nassau of 21.4.1975 (Official Gazette [ABl.] the Protestant Church in Hessen and Nassau p. 131) and section 7 of the Model Rules for the Internal Structure and Organisation of Catholic Hospitals in Hessen, Rhineland-Palatinate and the Saarland (Musterordnung für die innere Struktur und Organisation der Katholischen Krankenhäuser in Hessen, Rheinland-Pfalz und Saarland [Official Church Gazette of the Diocese of Fulda 1986, p. 89]).

Cf. also: Agreement on Protestant Cure of Souls in the Federal Border Police (Vereinbarung über die evangelische Seelsorge im Bundesgrenzschutz) of 20-23.7. / 12.8.1965 (Joint Ministerial Gazette [GMBL.] ed. A 16 p. 374; amended by correspondence of 1.7.1968 / 8.5.1969) and the Agreement on Catholic Cure of Souls in the Federal Border Police (Vereinbarung über die katholische Seelsorge im Bundesgrenzschutz) of 29.7. / 12.8.1965 (GMBL. ed. A 16 p. 377).

An example of the state-church treaties in police cure of souls is the Agreement on the Church Service to Police Officials (Police Cure of Souls) in the Saarland (Vereinbarung über den kirchlichen Dienst an Polizeibeamten (Polizeiseelsorge) im Saarland) of 25.10.1978 (GMBL. Saarland 1979, p. 214).

In the area of the law on schools, on 10.9.1957 the Agreement between the Land of Lower Saxony and the Protestant Land Churches in Lower Saxony on Private Schools (Vereinbarung des Landes Niedersachsen mit den Evangelischen Landkirchen in Niedersachsen über die Privatschulen) was concluded (Ministerial Gazette of Lower Saxony [Nds. MBl.] p. 970).

¹⁰⁴ Note: For military chaplaincy in the new Federal Länder applies the Framework Agreement of the Federal Republic of Germany with the Protestant Church in Germany on Protestant Cure of Souls in the Federal Armed Forces in the Territory of the New Federal Länder (Rahmenvereinbarung der Bundesrepublik Deutschland mit der Evangelischen Kirche in Deutschland über die evangelische Seelsorge in der Bundeswehr im Bereich der neuen Bundesländer) of 12.6.1996 (Official Gazette of the Protestant Church in Germany [Abl. EKD] 1997 p. 101).

(2) The state shall take care for the organisational construction of military chaplaincy and shall bear its costs.

Article 3

(1) Military chaplaincy shall be carried out by clerics charged with this task on a full-time basis (military chaplains). One military chaplain will be appointed for every one thousand five hundred Protestant soldiers (article 7 para 1 Nos. 1 to 3).

(2) In special cases, clerics in the service of the member churches may be entrusted with tasks of military chaplaincy part-time (part-time military chaplains).

Article 4

The task of the military chaplains shall be to serve in word, sacrament and cure of souls. In this service, the military chaplain shall be independent within the framework of the ecclesiastical system. As holder of an ecclesiastical office, he shall remain bound to his member church concerning confession and doctrine.

Article 5

Soldiers shall be afforded the opportunity to participate in church life within the bounds of the possibilities of the service.

Part II: Personnel Cure of Souls Areas and Military Parishes

Article 6

(1) Military chaplaincy shall be carried out in personnel cure of souls areas. The personnel cure of souls areas shall be formed by the member churches involved.

(2) It shall be left to the member churches to establish military parishes as Land Church personnel military parishes.

(3) The formation, establishment and alteration in the individual personnel cure of souls areas and military parishes shall be agreed upon by the Military Bishop and the member churches involved after previous agreement with the Federal Minister of Defence.

Article 7

(1) The following shall be included in the personnel cure of souls areas or the military parishes:

1. professional soldiers,
2. soldiers on term,
3. conscripts during basic military service,
4. soldiers called up for an indefinite period in case of defence,
5. civil servants and employees active in the Federal Armed Forces who are to follow the troops in case of defence,
6. the wives and children under parental authority of the persons named at No. 1, 2 and 5 if they belong to their households at the post.

(2) The following shall cease to be a member of the personnel cure of souls areas or the military parishes:

1. persons who have declared their resignation from the church with legal effect,
2. persons whose legal relationship to the Federation giving rise to affiliation to the personnel cure of souls areas or to the military parishes ends
3. retired persons, as well as their wives and children under parental authority,
4. the wives and children under parental authority of deceased members of the personnel cure of souls areas or the military parishes.

(3) The Military Bishop and the Federal Minister of Defence may agree on an other definition of the group of persons named in para 1 Nos. 5 and 6.

Article 8

(1) The members of the personnel cure of souls areas shall be members of the local parishes where the personnel cure of souls areas are formed. The members of the military parishes shall not belong to local parishes.

(2) The military chaplain appointed for the personnel cure of souls area shall be responsible for official ecclesiastical acts in his cure of souls area. Parochial rights shall be connected with the military parishes.

Article 9

Military chaplaincy shall also take care of the soldiers who are not members of personnel cure of souls areas or military parishes.

Part III: Military Bishop

Article 10

The ecclesiastical management of military chaplaincy shall lie with the Military Bishop.

Article 11

(1) The Military Bishop shall be nominated by the Council of the Protestant Church in Germany. Prior to nomination, the Council of the Protestant Church in Germany shall get in touch with the Federal Government in order to make sure that from the state point of view, no weighty demurs are raised against the cleric designated for the office of the Military Bishop.

(2) The Council of the Protestant Church in Germany may remove the Military Bishop from office for important ecclesiastical reasons. It shall inform the Federal Government suitable time in advance of such an intention, and at the same time shall communicate the person envisaged as the new holder of that office to it.

Article 12

(1) The Military Bishop shall be competent for all ecclesiastical matters in connection with military chaplaincy, in particular for:

1. the installation of military chaplains in their ecclesiastical office in military chaplaincy,

2. the highest ecclesiastical supervision of military chaplains with the exception of discipline related to teachings and disciplinary power, which shall remain with the member churches,
3. the issuance of guidelines for training of military chaplains and the surveillance of their implementation,
4. holding periodical official meetings with the military chaplains,
5. the visitation of the personnel cure of souls areas and the military parishes,
6. the issuance of a field liturgy,
7. religious literature in military chaplaincy,
8. the ecclesiastical certification and reporting system and the keeping of church registers,
9. the consecration of premises of military chaplaincy for religious services,
10. the church collection system in military chaplaincy,
11. the issuance of guidelines for pastoral cooperation with ecclesiastical bodies of the civil area and with the military chaplaincy of foreign states,
12. cure of souls for Protestant prisoners-of-war.

(2) In the framework of military chaplaincy, the Military Bishop may approach the personnel cure of souls areas, the military parishes as well as the military chaplains by giving addresses, instructions and by other written announcements.

Article 13

Provisions and guidelines of the Military Bishop must keep up with the framework of the general canon law. Where they also concern state positions, they shall require the consent of the Federal Minister of Defence.

Part IV: Ecclesiastical Office

Article 14

To exercise the central administrative duties of Protestant military chaplaincy, at the seat of the Federal Ministry of Defence a "Protestant Ecclesiastical Office for the Federal Armed Forces" shall be established directly subordinated to the Federal Minister of Defence.

Article 15

(1) A general military superintendent shall be appointed head of the Protestant Ecclesiastical Office for the Federal Armed Forces at the proposal of the Military Bishop.

(2) The general military superintendent shall be subordinate to the Military Bishop. As far as he exercises state administrative duties connected with military chaplaincy, he shall be subordinate to the Federal Minister of Defence.

(3) The Military Bishop may charge the general military superintendent in individual cases with exercising the powers vested in him in accordance with article 12 para 1.

Part V: Military Chaplains

Article 16

Military chaplains shall have a clerical assignment in fulfilment of which they shall be independent of state directives. As to the rest, their legal status shall be regulated in accordance with the following provisions.

Article 17

(1) Military chaplains must:

1. have completed at least three years of theological studies at a German state university,
2. be entitled to exercise the incumbency in a member church,
3. have worked for at least three years in Land Church cure of souls.

(2) They should not have exceeded the age of thirty-five on appointment to the military chaplaincy service.

(3) It shall be possible to waive the requirements of para 1 No. 1 and 3 if agreement is reached between Federal Minister of Defence and the Military Bishop.

Article 18

(1) The military chaplains shall first be appointed for a three-month on a trial basis in the military chaplaincy service, at the proposal of the Military Bishop, who shall before make sure he has the approval of the competent member church. The probationary period may be extended with the consent of the competent member church.

(2) During their probationary period, military chaplains shall have employee status and shall receive emolument at least corresponding to their church official emoluments.

Article 19

(1) After their probationary period, military chaplains shall be appointed temporary civil servants; if they are to be permanently employed for managerial tasks in military chaplaincy, they shall be appointed as permanent civil servants.

(2) The provisions applying to permanent Federal civil servants shall apply to military chaplains appointed as permanent civil servants unless otherwise determined in this treaty.

(3) The remainder of the military chaplains shall be appointed as civil servants for a period of between six and eight years. On expiry of the tenure, their status as civil servants shall end. The set tenure may be extended by a maximum of four years; in this case, their status as civil servants shall be deemed not to have been interrupted. The provisions applying to permanent Federal civil servants shall apply to these military chaplains analogously unless otherwise stipulated in this treaty.

Article 20

(1) Proposals to nominate and promote or transfer military chaplains shall require the approval of the Military Bishop.

(2) Prior to other important decisions in personnel matters of military chaplains, the Federal Minister of Defence shall obtain a statement from the Military Bishop.

Article 21

There shall be no regular service career for the offices from military superintendent upwards.

Article 22

(1) In ecclesiastical matters, military chaplains shall be subordinate to the leadership and supervision of the Military Bishop (article 12 para 1 No. 2) as well as the supervision of the general military superintendent and the remainder of military chaplains entrusted by the Military Bishop with the supervision.

(2) For military chaplains as Federal civil servants,

1. the highest authority shall be the Federal Minister of Defence,
2. the direct superior shall be the general military superintendent.

Article 23

(1) Military chaplains shall also be dismissed:

1. in the event of loss of rights acquired on ordination or if removed from ecclesiastical office under disciplinary law,
2. on application of the Military Bishop if his employment in the service of the church is in the important interest of church.

(2) A military chaplain dismissed in accordance with para 1 shall subject to the provision in paras 3 and 4 have no right to support from the civil service. Section 154 of the Federal Act on Civil Servants (Bundesbeamtenengesetz) shall remain unaffected, provided that para 5 also applies to the re-employment of the military chaplain in the service of the church. Furthermore, in the case of a military chaplain injured in an accident at work in the case of his dismissal in accordance with para 1 No. 1, sections 143 and 147 of the Federal Act on Civil Servants and in the case of his dismissal in accordance with para 1 No. 2, article 25 para 1 third sentence of this treaty shall apply.

(3) A military chaplain with a service period in accordance with section 106 subsection 2 of the Federal Act on Civil Servants of at least ten years, may in the case of his dismissal according to para 1 No. 1 be awarded a maintenance allowance up to the amount of the pension instead of the transitional money .

(4) If a military chaplain, who at the time of assumption to permanent civil service as a military chaplain, was a civil servant for reemployment within the meaning of the Act to Regulate the Legal Relationship of Persons falling under article 131 of the Basic Law (Gesetz zur Regelung der Rechtsverhältnisse der unter Artikel 131 des Grundgesetzes fallenden Personen) and is accommodated in accordance with his previous legal status, is dismissed in accordance with para 1, the rights according to the above referenced act shall revive.

Article 24

The time spent by a military chaplain prior to nomination as a civil servant in the service of the church as a cleric shall be counted towards pension.

Article 25

(1) A military chaplain with the legal status of a temporary civil servant whose civil service employment ends with expiry of the set tenure shall have no right to support from the civil service employment. Section 154 of the Federal Act on Civil Servants shall remain unaffected provided that para 5 also applies to re-employment of the military chaplain in the service of the church. Furthermore, a military chaplain injured in an accident at work shall retain the claims accruing from the law on accident welfare work applying to civil servants, that in the case of re-employment in the service of the churches are directed against the church employer in accordance with the law of the latter.

(2) If in the case of para 1 the cleric is reemployed in the service of the church, thus in the incidence of an event of support the Federation and the church employer shall bear the support payments rateably to the pensionable service periods the cleric served with them. Only full years shall be included in counting the service periods.

(3) If the cleric has been promoted in or after his assumption to the service of the church, the share of the Federation in the support payments shall be measured as if the cleric had remained in the office in which he was in prior to assumption.

(4) The church employer shall pay the full support payment. He shall have a claim against the Federation to a rateable refund. The church employer shall pay the full remuneration for the month of death and the death benefit if they are measured according to the official emoluments of the cleric.

Part VI: Assistants

Article 26

(1) Military chaplains shall be provided by the state with assistants required to support them in religious ceremonies and administrative duties connected with military chaplaincy.

(2) Assistants to military chaplains exercising supervision shall be taken into civil service employment.

Part VII: Final Provisions

Article 27

The Contracting Parties will settle any difference of opinion possibly occurring between them in future by interpreting a provision of this treaty in an amicable manner. In the same way they will agree on any special regulations possibly becoming necessary.

Final Protocol in re Article 3 Para 2

The tasks, rights and duties of part-time military chaplains shall be regulated by agreement between the Military Bishop and the Federal Minister of Defence.

Final Protocol in re Article 6 Para 3

The agreements on the formation, establishment and alteration of the personnel cure of souls areas and the military parishes shall be published in the Ordinance Gazette of the Military Bishop.

Final Protocol in re Article 7

The members of the personnel cure of souls areas and the military parishes shall be obliged to pay church levies; a detailed regulation shall remain reserved to the competent bodies.

Final Protocol in re Article 10

The Military Bishop shall receive a suitable service expense allowance from the state. All material expenses incurred in connection with the ecclesiastical management of military chaplaincy shall be refunded to him. He shall receive travel expenses in accordance with travel expenses level 1 a.

Final Protocol in re Article 11

(1) The Federal Government shall, if desired, communicate its reasons for having objections against the cleric proposed for nomination as Military Bishop. Equally, the Council of the Protestant Church in Germany shall communicate its reasons for recalling the Military Bishop.

(2) It is understood that the name of the envisaged Military Bishop is to be treated confidentially until his nomination has been published by the Council of the Protestant Church in Germany.

Final Protocol in re Article 12 Para 1 No. 1

If a member church reserves the right to transfer a military chaplain the ecclesiastical office by another cleric, the Military Bishop shall participate in installation by greeting the military chaplain and giving him the church document of appointment.

Final Protocol in re Article 12 Para 1 No. 8

The completed church registers shall be managed by the Protestant Ecclesiastical Office for the Federal Armed Forces.

Final Protocol in re Article 13

Provisions and guidelines of the Military Bishop shall be published in the Ordinance Gazette of the Military Bishop.

Final Protocol in re Article 15

The general military superintendent shall be entitled to speak directly to the Federal Minister of Defence on behalf of the Military Bishop.

Final Protocol in re Articles 16 to 25

(1) The official ecclesiastical dress of the military chaplains shall be determined by the Military Bishop.

(2) The consent of the Military Bishop shall be obtained prior to installation of an service dress for the military chaplains.

Final Protocol in re Article 26

- (1) An assistant shall be allocated to every military chaplain, with the exception of the military chaplain in the “Protestant Ecclesiastical Office for the Federal Armed Forces”.
- (2) The assistants to the military chaplains must be of the Protestant confession. They must, where necessary, prove their suitability for the auxiliary service in the military chaplaincy by taking an examination held with the involvement of the military superintendent, or of a military chaplain authorised by him.