

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 registrar's office after the ecclesiastical marriage ceremony. This precondition is however not met with 'pension

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.

Those Catholic organisations which besides their religious, cultural and charitable purposes pursue also others, among them social or professional tasks, irrespective of a possible

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.

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.

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

⁸¹ Note: The final protocol forms an "integral part of the concordat itself".

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 to 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.