

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

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.

(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.

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.

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 .

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 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.

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

⁸⁵ Note: The final protocol forms an "integral part of the concordat itself".

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. GVBl.] 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.

⁸⁶ Note: The printed articles are only an excerpt from the treaty.