

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)<sup>103</sup>**

***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)<sup>104</sup>***  
*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.

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<sup>103</sup> 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).

<sup>104</sup> 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).

### *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.

(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.