

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.