

## **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.<sup>13</sup> 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.

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<sup>13</sup> 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 System<sup>14</sup> in the Land of North-Rhine Westphalia - School Organisation Act<sup>15</sup> (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.

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<sup>14</sup> 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.

(...)

<sup>15</sup> 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)<sup>16</sup>.

### *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.

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<sup>16</sup> 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.<sup>17</sup> Sections 102, 104, 105 and 107<sup>18</sup> shall apply mutatis mutandis to recognition as state-recognised universities.

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<sup>17</sup> 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.

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