

## **P) Religion and Religious Communities in General Legal Relations**

### *1. Law on Aliens:*

#### *Act on the Entry and Residence of Aliens on Federal Territory - Aliens Act (Gesetz über die Einreise und den Aufenthalt von Ausländern auf dem Bundesgebiet - Ausländergesetz - AuslG)*

*of 9 July 1990 (Federal Law Gazette [BGBl.] Part I p. 1354), last amended by Act  
of 9 January 2002 (BGBl. Part I. p. 361)*

#### *Section 37 Prohibition and Restriction of Political Activity*

(...)

(2) The political activity of an alien shall be prohibited as far as it t

(...)

2. publicly supports or advocates, or is intended or likely to cause the use of force as a means to implement political, religious or other concerns, or

(...)

#### *Section 51 Prohibition of the Extradition of Political Persecutee*

(1) An alien may not be extradited to a state in which his/her life or freedom is threatened because of his/her race, religion, nationality, his/her membership of a specific social group or because of his/her political conviction.

(...)

(3) Subsection 1 shall not apply if the alien for serious reasons is to be regarded as a danger to the security of the Federal Republic of Germany or constitutes a danger to the general public because he/she has been sentenced because of a crime or particularly serious offence with legal force to at least three years' imprisonment. The same applies if for serious reasons the assumption is justified, that the alien has committed a crime against peace, a war crime or a crime against humanity in terms of the international treaties, which have been elaborated, in order to create regulations regarding these crimes, or that he committed a grave, non political crime outside of the Federal Republic of Germany before his reception as refugee, or that he bears the blame for acts, contrary to the objectives and principles of the United Nations.

## 2. *Traffic Law:*

### ***Ordinance on the Operation of Transport Enterprises in Local Public Passenger Transport (Verordnung über den Betrieb von Kraftfahrunternehmen im Personennahverkehr - BOKraft)***

*of 21 June 1975 (Federal Law Gazette [BGBl.] Part I p. 1573), in the version of  
30 June 1989 (BGBl. Part I p. 1273), last amended by Ordinance of 26 May 1998  
(BGBl. Part I p. 1195)*

#### *Section 26 Labelling*

(...)

(4) Third party advertising on taxis and hire cars shall only be permissible on the side doors of the vehicle. Political and religious advertising on taxis shall be prohibited.

## 3. *Law on Foundations:*

### ***Act on Foundations under Civil Law with Legal Capacity [of Schleswig-Holstein] - Foundations Act (Gesetz über rechtsfähige Stiftungen des bürgerlichen Rechts [von Schleswig-Holstein] - Stiftungsgesetz - StiftG)***

*of 13 July 1972 (Law and Ordinance Gazette of Schleswig-Holstein [GVOBl.] p. 123),  
in the version of 2 March 2000 (GVOBl. Schl.-H. p. 208)*

#### *Section 1 Definitions*

Foundations within the meaning of this act shall be foundations under civil law with legal capacity (sections 80 to 88 of the Civil Code [Bürgerliches Gesetzbuch - BGB]) with their registered seat in the Land of Schleswig-Holstein.

#### *Section 7 Accession to Property*

(1) If the act of foundation or the statutes for the event of dissolution or abolition of a foundation contain no provisions regarding the use of the property, the property, including obligations, shall fall

(...)

2. of a church foundation (section 18) to the church carrying out supervision,

(...)

If there is no remainderman in terms of the first sentence No. 2, the finance authorities shall accede to the property.

#### *Section 18 Church Foundations*

(1) Church foundations shall be foundations exclusively or predominantly serving ecclesiastical purposes and which are

1. organisationally linked to a church, or

2. subjected to church supervision in the foundation's statutes, or
3. can only sensibly fulfil their purposes in connection with a church.

Church foundations shall require recognition by the competent church authority prior to approval.

(2) In the case of measures related to church foundations, the authority competent in accordance with this act shall come to an understanding with the competent church authority. In the event of amendments to the statutes that change the objectives of the foundation, as well as with combinations, dissolutions and abolitions of church foundations, additionally the consent of the Ministry of Education, Science, Research and Culture shall be required.

(3) Subsections 1 and 2, as well as section 7 subsection 1 first sentence No. 2 and the second sentence and subsection 2, shall apply mutatis mutandis to foundations of the religious societies and ideological associations which are corporations under public law.

#### **4. Law Relating to Holidays:**

##### ***a) Act on Sundays and Holidays [of Bremen] (Gesetz über die Sonn- und Feiertage [von Bremen])***

*of 12 November 1954 (Bremen Law Gazette [GBl.], p. 115), last amended by proclamation of 27 June 2000 (GBl. Brem. pp. 237 (238))*

##### *Section 1*

(1) Sundays, state-recognised holidays and church holidays shall be protected in accordance with this act.

(2) Such protection shall apply from 0.00 to 24.00 unless otherwise determined with regard to its duration.

#### **Part I: Sundays and State-Recognised Holidays**

##### *Section 2*

(1) State-recognised holidays shall be:

- a) New Year's Day,
- b) Good Friday,
- c) Easter Monday,
- d) 1 May,
- e) Ascension Day,
- f) Whit Monday,
- g) 3 October - Day of German Unity,
- h) Christmas Day, and

i) Boxing Day.

(2) These days shall be high days, general or legal holidays and general public rest days in terms of the provisions of Federal or Land law, in particular also in accordance with the Federal Act Governing Wage Payment on Holidays (Bundesgesetz zur Regelung der Lohnzahlung an Feiertagen) of 2 August 1951 (BGBl. Part I p. 479).

*Section 3*

Sundays and state-recognised holidays shall be days of general rest from work.

*Section 4*

(1) Publicly-observable work disturbing the external peace or contrary to the spirit of Sundays and holidays shall be prohibited.

(2) Those acts shall be exempt from the prohibition in accordance with subsection 1 which are particularly permitted by Federal or Land laws or listed below:

(...)

c) non-commercial light work in house and garden, unless causing a direct disturbance to religious services.

(3) The local police authorities may permit the organisation of markets not determined in accordance with sections 68 or 69 of the Industrial Code (Gewerbeordnung) or events similar to markets, in particular flea markets, if these predominantly serve the purposes of leisure and the organiser ensures that no commercial providers participate. The issuance of permission shall be impossible if the event may cause a direct disturbance to religious services. Permission may be provided with instructions and conditions; it may be revoked if the preconditions for its issuance no longer apply.

*Section 5*

(1) On the days named in section 3 during the period from 7.00 to 11.00 a.m., the following events and activities shall be prohibited unless particularly permitted in accordance with Federal law or allowed in accordance with Land law and not postponable:

- a) public open air assemblies and public processions not connected to religious services;
- b) events for entertainment or pleasure where there is no higher interest of art, science or popular education;
- c) sports, athletic and similar commercial events;
- d) events and activities causing a direct disturbance to religious services.

The basic right of freedom of assembly (article 8 para 2 of the Basic Law) shall be restricted in this sense.

(2) The restrictions of subsection 1 shall not apply to 1 May and 3 October.

*Section 6*

(1) The following shall be prohibited on Good Friday, National Remembrance Day and on the Sunday in commemoration of the dead (last Sunday before the first Advent Sunday):

- a) events on premises where alcohol is sold going beyond the sale of alcohol and food;
- b) sports, athletic and similar commercial events;
- c) sports, athletic and similar events of a non-commercial nature where they are linked to parades and processions, with entertaining music or festive events;
- d) all other public events where the serious nature of such days is not retained.

The prohibitions shall apply on National Remembrance Day, the Day of Prayer and Repentance and on the Sunday in commemoration of the dead from 4 a.m. to 5 p.m., on Good Friday from 4 a.m. to 4 a.m. of the following day.

## **Section II: Church Holidays**

### *Section 8*

No events and activities causing a direct disturbance to religious services on the following church holidays shall be permitted close to buildings and premises used for religious services of the respective confession:

- a) on 31 October - Reformation Day - (Protestant holiday);
- b) on Thursday after Trinity Sunday - Corpus Christi - (Catholic holiday);
- c) on 1 November - All Saints - (Catholic holiday);
- d) on Day of Prayer and Repentance (Protestant holiday).

### *Section 9*

Members of the religious societies in employment or training shall be afforded the opportunity to attend a religious service on the holidays of their confession named in section 8 unless this is opposed by operational necessities.

### *Section 10*

(1) Pupils of the general schools, as well as professional schools, and vocational schools, shall have no lessons on the holidays of their religious societies named in section 8. The pupils of the training schools shall be released from instruction on application.

(2) The supreme Land authority responsible for matters concerned with cultural matters and school affairs shall be empowered to grant an exemption from instruction on holidays other than those named in section 8.

## **Part III: Final Provisions**

### *Section 11*

The Senator for Home Affairs, Culture and Sport may in individual cases grant an exemption from the restrictions and prohibitions provided for in this act for important reasons.

### *Section 12*

The Senate shall be empowered:

- a) to set the date on which National Remembrance Day takes place;
- b) for special reasons in individual cases to declare the provisions of this act fully or partly applicable also on days not named in section 3.

***b) Act on Shop Closing Times (Gesetz über den Ladenschluß)***

*of 28 November 1956 (Federal Law Gazette [BGBl.] Part I p. 875), last amended by Act of 21 December 2000 (BGBl. Part I p. 1983)*

**Part II: Shop Closing Times**

*Section 3 General Shop Closing Times<sup>70</sup>*

(1) sales outlets must be closed at the following times for business with customers:

- on Sundays<sup>71</sup> and holidays,

(...)

- on the four consecutive Saturdays before 24 December until 6 a.m. and from 6 p.m.,

- on 24 December if this day falls on a weekday, until 6 a.m. and from 2 p.m.

(...)

*Section 12 Sale of Specific Goods on Sundays*

(...)

(2) In the statutory rules and orders<sup>72</sup> issued in accordance with subsection 1, opening on specific Sundays and holidays or seasons can be restricted, as well as for specific types of sales outlets. Opening on Boxing Day, as well as on the second days of Easter and Whitsun holidays, should not be permitted. The position of the opening times that are permitted shall be determined by statutory orders issued by the Land Governments or the bodies they appoint taking account of the time of the main religious service.

---

<sup>70</sup> Note: Exceptions apply to specific shops and branches, such as in accordance with sections 4, 5, 6, 8, 9 and 10 to chemists, petrol stations, sales outlets at passenger railway stations and airports, to the sale of newspapers and periodicals and for spa and recreation venues. Furthermore, for instance sections 18a and 19 contain special provisions for market transport and for the sale of flowers at cemeteries.

<sup>71</sup> Note: Special provisions for sale on Sundays can be found inter alia in sections 14 and 15 for so-called sale Sundays and for sale on 24 December when it falls on a Sunday.

<sup>72</sup> Note: These ordinances refer to the sale of milk and dairy products, bakery and pastry products, fresh fruit, flowers and newspapers.

## **5. Animal Protection:**

### ***Animal Protection Act (Tierschutzgesetz)***

*of 24 July 1972 (Federal Law Gazette [BGBl.] Part I p. 1277), in the version of the proclamation of 25 May 1998 (Federal Law Gazette [BGBl.] Part I p. 1105, corr. p. 1818), last amended by Act of 29 October 2001 (BGBl. Part I p. 2785)*

#### *Section 4a [Killing of Warm-Blooded Animals]*

(1) A warm-blooded animal may only be slaughtered if it has been anaesthetised prior to the removal of blood.

(2) Deviating from subsection 1, no anaesthetic shall be required if

(...)

the competent authority has issued exceptional permit for slaughtering without anaesthetic (slaughtering according religious rites); it may only issue exceptional permit in so far as is necessary in order to meet the needs of members of specific religious communities in the area of application of this act who are required by binding provisions of their religious community to slaughter according to religious rites or who are enjoined by them from eating of meat from animals not slaughtered according to religious rites, or

(...)

## **6. Law on Collections:**

### ***Act on Collections [of Berlin] (Sammlungsgesetz)***

*of 22 February 1967 (Law and Ordinance Gazette [GVBl.] of Berlin p. 362), in the version of 23 January 1973 (GVBl. of Berlin p. 394), last amended by Act of 16 July 2001 (GVBl. of Berlin p. 260 and 263 )*

#### *Section 1 Collections Requiring Permission*

(1) Whosoever wishes to organise a collection of money or of material donations or benefits having monetary value by direct person-to-person influence

a) on streets, on squares, in public houses or restaurants, in accommodation businesses or on other premises accessible to all (street collections),

b) from door to door, in particular with collection lists (house collections)

shall require permission.

(...)

(3) Collections carried out by an association among its members or another organiser within a group of individuals linked with him/her by personal relations shall not require permission.

(4) Collections carried out in spatial or chronological connection with an assembly or another event in closed rooms among the participants in the event shall not require permission.

### *Section 8 Participation of Children and Juveniles*

(1) Children under the age of fourteen may not be involved in collections. This shall not apply to collections by the churches, religious communities and ideological associations in accordance with section 11 No. 1 (a) and No. 2 (a).

(2) Juveniles between the age of fourteen and eighteen may only participate in street collections, and only until the onset of darkness; the competent authority may permit exceptions in individual cases if no danger to the juveniles is to be feared.

### *Section 11 Collections by the Churches, Religious Communities and ideological associations*

This act shall not apply with the exception of section 8 to

1. collections by the churches, religious communities and ideological associations
  - a) in churches and on other premises serving religious services or to foster the philosophy,
  - b) in the shape of house collections among their members.
2. collections by the churches, religious communities and ideological associations under public law
  - a) in churches and on other premises serving religious services or to foster the philosophy,
  - b) in the shape of house collections among their members,
  - c) in forecourts of churches or on other land belonging to the churches, religious communities or ideological associations,
  - d) in a local context with church, religious or ideological events.

## **7. Law on Insurance:**

- a) Social Code (Sozialgesetzbuch - SGB) Fifth Book (V): National Health Insurance of 20 December 1988 (Federal Law Gazette [BGBl.] Part I pp. 2477 and 2482), last amended by Act of 15 February 2002 (BGBl. Part I p. 684)***

## **Chapter I: General Provisions**

### *Section 2 Services*

(...)

(3) In selecting the service-provider, their diversity shall be observed. The religious needs of the insured parties shall be accommodated.

(...)



## **Chapter II: Group of Insured Persons**

### *Section 5 Compulsory Insurance*

(1) Persons subject to compulsory insurance are

1. workers, employees and those engaged in their vocational training, employed for a wage

(...)

(4a) apprentices, trained within the scope of a contract on vocational education according to the act on vocational education in an external institution, are equal with employees engaged in their vocational training in terms of subsection 1 No.1. Persons shall be deemed employees engaged in their vocational training in terms of subsection 1 No. 1 who are in out-of-school training as not-regular members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity.

(...)

### *Section 6 Exemption from Insurance*

(1) The following shall be exempt from insurance

(...)

4. clerics of religious societies recognised as corporations under public law if in case of illness they are entitled under the legal provisions or principles applicable to civil servants to continued payment of remuneration and allowances

(...)

7. statutory members of clerical brotherhoods, deaconesses and similar persons if they engage in sick-nursing, education or other non-profit work on predominantly religious or moral grounds and do not receive more than their free board and lodging or a small sum by way of remuneration that merely suffices to cover their direct needs in terms of accommodation, food, clothing and the like,

(...)

(2) Surviving dependants of the persons referred to in subsection 1 Nos. 2 and 4 to 6 who are subject to compulsory insurance in accordance with section 5 subsection 1 No. 11 shall be exempt from insurance if they derive their pension rights only from the insurance of these persons and in case of illness are entitled under the legal provisions or principles applicable to civil servants to allowances .

## **Chapter IV: Relationship between the Health Insurance Funds and the Service-Providers**

### *Section 111a Framework Recommendations Regarding Prevention and Rehabilitation Measures*

(...) for prevention and rehabilitation facilities allocatable to a church or religious community under public law or another independent non-profit bearer, the framework recommendations may be concluded together with the other partners to the framework recommendations and by the church or the religious community or the welfare association to which the facility belongs.

(...)

*Section 132a Provision of Domestic Sick-Nursing*

(1) (...) for nursing services allocatable to a church or religious community under public law or another independent non-profit bearer, the framework recommendations may be concluded together with the other partners to the framework recommendations and by the church or the religious community or the welfare association to which the facility belongs. (...)

(...)

**Chapter VIII: Funding**

*Section 251 Contributions Born by Third Parties*

(...)

(4b) For persons undergoing out-of-school training as non-statutory members of clerical brotherhoods or similar religious confraternities for service in such a brotherhood or similar religious confraternity, the clerical brotherhood or similar religious confraternity shall bear the contributions.

(...)

***b) Social Code (Sozialgesetzbuch - SGB) Sixth Book (VI): National Pensions Insurance of 18 December 1989 (Federal Law Gazette [BGBl.] Part I p. 2261, corr. BGBl. 1990 Part I p. 1337), last amended by Act of 20 December 2001 (BGBl. Part I p. 4010 )***

**Chapter I: Group of Insured Persons**

*Section 1 Employees*

Persons subject to compulsory insurance are

(...)

4. members of clerical brotherhoods, deaconesses and members of similar confraternities during their service for the community and during their out-of-school training.

(...)

*Section 5 Exemption from Insurance*

(1) The following shall be exempt from insurance

(...)

2. other employees of corporations, institutions or foundations under public law, their associations including the central associations or their working groups if they are entitled to expectancies of support in accordance with legal provisions or principles applicable to civil servants or corresponding canonical regulations in the event of reduced ability to work and in old age, as well as to support for surviving dependants, and it is ensured that the guarantee will be implemented,

3. statutory members of clerical brotherhoods, deaconesses and members of similar confraternities, if they are entitled to an expectancy in accordance with the rules of the

community to the support usual in the community in the event of reduced ability to work and in old age, and it is ensured that the guarantee will be implemented,

in this employment and in other employment to which the guarantee of a support expectancy is applied. The competent Federal Minister shall decide on meeting the requirements in accordance with the first sentence Nos. 2 and 3 and the application of the guarantee to further employments for employees in the Federation and with official employers and other employers subject to Federal supervision, in other cases the highest administrative authority of the Land in which the employers, brotherhoods or communities have their seat.

(...)

(4) The following persons shall be exempt from insurance who

(...)

2. in accordance with the legal provisions or principles applicable to civil servants or corresponding canonical regulations or in accordance with the provisions of a professional supply facility draw a pension after reaching an age limit or who receive the pension usual in the community in old age in accordance with subsection 1 first sentence No. 3, or

(...)

#### *Section 6 Exemption from Compulsory Insurance*

(1) The following persons shall be exempt from compulsory insurance

(...)

2. teachers or educators employed at non-public schools or institutions if they are in accordance with principles applicable to civil servants or corresponding canon law provisions entitled to expectancies of support in the event of reduced ability to work and in old age, as well as to support for surviving dependants, and it is ensured that the guarantee will be implemented,

(...)

### **Chapter IV: Funding**

#### *Section 162 Contributory Earnings of Employees*

contributory earnings shall be

(...)

4. with members of clerical brotherhoods, deaconesses and members of similar confraternities the benefits in cash and remuneration in kind they receive which they receive personally, but with members that on termination of their training are not entitled to the support usual in the community, or for whom the guarantee is not ensured (section 5 subsection 1 first sentence No. 3) at least forty percent of the reference value,

(...)

#### *Section 168 Payment of Contributions for Employees*

(1) The contributions shall be borne

(...)

4. in the case of members of clerical brotherhoods, deaconesses and members of similar confraternities by the brotherhoods or confraternities if the monthly wage does not exceed forty percent of the monthly reference value, otherwise half each by the members and the brotherhoods or confraternities,

(...)

#### *Section 206 Supplement Payment for Clerics and Religious*

(1) Clerics and other employees of the religious societies recognised as corporations under public law, members of clerical brotherhoods, deaconesses and members of comparable charitable communities recognised as expellees and who exercised prior to their expulsion employment or an activity in terms of section 5 subsection 1 first sentence No. 2 or No. 3, may if they have not reassumed similar employment or activity in the inland, on application for the times of exemption from insurance, but backdated to a maximum of 1 January 1943, pay voluntary contributions unless these times are already covered by contributions.

(2) Subsection 1 shall not apply if the times of exemption from insurance are eligible in terms of a pension from

1. public service, or
2. employment with a right to a support in accordance with the legal provisions or principles applicable to civil servants or corresponding canonical regulations

or are recognised as eligible when the pensionable event takes place.

(3) The subsequent payment shall only be permissible if the general waiting time has been completed, or if compulsory contributions have been paid for at least 24 calendar months after taking up residence in the inland .

#### *c) Social Code (Sozialgesetzbuch - SGB) Seventh Book (VII) National Accident Insurance of 7 August 1996 (Federal Law Gazette [BGBl.] Part I p. 1254), last amended by Ordinance of 29 October 2001 (BGBl. Part I p. 2785)*

### **Chapter I: Tasks, Group of Insured Persons, Event of Loss**

#### *Section 2 Insurance by Act of Law*

(1) The following shall be ensured by act of law

(...)

10. persons working on an honorary basis for corporations, institutions or foundations under public law or their associations or working groups, for public-law religious communities or for the institutions named in Nos. 2 and 8 or participating in training events for this activity,

(...)

#### *Section 4 Exemption from Insurance*

(1) The following shall be exempt from insurance

(...)

3. statutory members of clerical brotherhoods, deaconesses and members of similar confraternities, if they are entitled to an expectancy in accordance with the rules of the community to the support usual in this community, and it is ensured that the guarantee will be implemented.

(...)

## **8. Procedural Law**

### **a) Act on International Mutual Assistance in Criminal Matters (*Gesetz über die Internationale Rechtshilfe in Strafsachen - IRG*)**

*of 23 December 1982 (Federal Law Gazette [BGBl.] Part I p. 2071), in the version of the proclamation of 27 June 1994 (BGBl. Part I p. 1537), last amended by Act of 13 December 2001 (BGBl. Part I p. 3574)*

## **Second Part: Extradition Abroad**

### *Section 6 Political Criminal Offences, Political Persecution*

(...)

- (2) Extradition shall be inadmissible if serious reasons exist for the presumption that the persecutee in the event of his/her extradition would be persecuted or punished because of his/her race, religion, nationality, membership of a specific social group or his/her political views or that his/her situation would be made worse for one of these reasons.

## **Part III: Transit**

### *Section 43 Permissibility of Transit*

(...)

- (4) Sections 6 to 8 shall apply mutatis mutandis to transit.

### **b) Courts Constitution Act (*Gerichtsverfassungsgesetz - (GVG)*)**

*of 27 January 1877 (Reich Law Gazette [RGBl.] p. 41), in the version of the proclamation of 9 May 1975 (BGBl. Part I p. 1077), last amended by Act of 27 April 2002 (BGBl. Part I p. 1467)*

## **Fourth Title: Courts of Judges and Juries (Schöffengerichte)<sup>73</sup>**

### *Section 34 [Other Persons Not to be Appointed]*

(1) Furthermore, the following shall not be appointed to the office of lay judge:

(...)

6. religious servants and members of such religious associations whose statutes oblige them to reside together;

(...)

## **Fifteenth Title: Language of the Court**

### *Section 189 [Interpreter's Oath]*

(1) The interpreter shall give an oath to the effect that:

he/she will interpret truly and conscientiously.

If the interpreter states that he/she does not wish to take an oath for reasons of faith or conscience, he/she shall give an affirmation. This affirmation shall be equivalent to an oath; the interpreter shall be informed of this fact.

(...)

### ***c) Introductory Act to the Courts Constitution Act (Einführungsgesetz zum Gerichtsverfassungsgesetz)***

*Act of 27 January 1877 (Reich Law Gazette [RGBl.] p. 77), last amended by Act  
of 27 July 2001 (BGBl. Part I p. 1887 )*

## **Part II: Interprocedural Ex Officio Communications**

### *Section 12 [Transmission of Personal Data]*

(1) The provisions of this part shall apply to the transmission of personal data ex officio by courts of ordinary jurisdiction and public prosecutor's offices to public bodies of the Federation or of a Land for other purposes than those of the proceedings for which the data were collected. Special legal provisions of the Federation, or, if the data are transmitted from proceedings governed by Land law, of a Land, deviating from sections 18 to 22, shall take preference over these provisions.

(2) Subsection 1 shall apply mutatis mutandis to the transmission of personal data to bodies of the public-law religious societies if it is ensured that the recipient has taken sufficient data protection precautions.

(...)

---

<sup>73</sup> Note: Schöffengerichte are courts with one professional and two lay judges.

*Section 14 [Transmission in Criminal Matters and Private Action Proceedings]*

(1) In criminal matters the transmission of personal data on the accused concerning the subject-matter of the proceedings shall be permissible if insight into the data is necessary in the view of the transmitting body for

(...)

4. service law measures or supervisory measures if

a) the person concerned is subject to service, state or professional control because of his/her profession or official capacity, is a cleric of a church or holds a corresponding office in another public-law religious society or is an civil servant of a church or of a religious society, and

b) the data permit one to conclude a breach of duties to be observed in the exercise of the profession or the performance of the tasks from the official capacity or are otherwise suited to give rise to doubt as to suitability, reliability or qualification,

5. the decision regarding dismissal or for other measures under labour law, for the decision on removal from office, for the revocation, withdrawal, restriction of official permission, approval or admission to exercise a trade, another economic enterprise or a profession or to use a professional designation, for the prohibition of the professional, trade or honorary activity or the other economic enterprise or for the prohibition of the recruitment, employment, supervision of children and juveniles, for the prohibition of the implementation of vocational training or for the order of a condition if

a) the person concerned is not a under No.4 falling member of the public service or of the service of a public-law religious society, a trader or an authorised agent of a trader or a person charged with the management of a business establishment or other economic enterprise, another working person or holder of an honorary office, and

b) the data permit one to conclude a breach of duties to be observed in the exercise of the service, trade, other economic enterprise, profession or honorary office, or otherwise suited to give rise to doubt as to suitability, reliability or qualification,

6. service order measures with consequences under support law or for the deprivation of support from surviving dependants, if the person concerned receives or can claim support payments from a public-law office or employment or from an office or employment with a church or other public-law religious society,

(...)

***d) Administrative Procedure Act (Verwaltungsverfahrensgesetz - VwVfG)***

*of 25 May 1976 (Federal Law Gazette [BGBl.] Part I p. 1253), in the version of the proclamation of 21 September 1998 (BGBl. Part I p. 3050), last amended by Act of 3 December 2001 (BGBl. Part I p. 3307)*

*Section 2 Exceptions from the Area of Application*

(1) This act shall not apply to the activities of the churches, religious societies and ideological communities and their associations and institutions.

(...)

*e) Administrative Execution Act (Verwaltungsvollstreckungsgesetz - VwVG)  
of 27 April 1953 (Federal Law Gazette [BGBl.] Part I p. 157), last amended by Act  
of 17 December 1997 (BGBl. Part I pp. 3039 and 3043)*

*Section 17 Execution against Authorities*

Means of coercion shall be inadmissible against authorities and legal entities under public law unless otherwise stipulated.

*f) Ordinance on the Procedure of the Administrative Courts  
(Verwaltungsgerichtsordnung - VwGO)*

*of 21 January 1960 (BGBl. Part I p. 17), in the version of the proclamation  
of 19 March 1991 (BGBl. Part I p. 686), last amended by Act of 20 December 2001 (BGBl.  
Part I p. 3987)*

**Part 1: Courts Constitution**

**Chapter III: Honorary Judges**

*Section 23 [Parties Entitled to Refuse]<sup>74</sup>*

(1) The following may decline the appointment to the office of an honorary judge

1. clerics and religious servants,

(...)

*g) Ordinance on Criminal Procedure (Strafprozeßordnung - StPO)*

*of 1 February 1877 (Reich Law Gazette [RGBl.] p. 253), in the version of the proclamation  
of 7 April 1987 ([BGBl. Part I p. 1074, corr. p. 1319), last amended by Act  
of 15 February 2002 (BGBl. Part I p. 682)*

---

<sup>74</sup> Note: The same regulation is contained with regard to the finance courts in section 20 subsection 1 No. 1 of the Ordinance on the Procedure of the Finance Courts (Finanzgerichtsordnung) dated 6.10.1965 (BGBl. Part I p. 1477), in the version of 28.3.2001 (BGBl. Part I p. 442).



## **Book One: General Provisions**

### **Chapter V: Time Limits and Restoration of the Status Quo Ante**

#### *Section 43 [Time Limits Determined in Weeks and Months]<sup>75</sup>*

(...)

(2) If the end of a time limit falls on a Sunday, a public holiday or a Saturday, the time limit shall expire at the end of the next workday.

### **Chapter VI Witnesses**

#### *Section 53 [Right to Refuse to Give Evidence on Professional Grounds]*

(1) The following persons may also refuse to give evidence:

1. clerics concerning the information entrusted to them or became known to them in their capacity as spiritual advisers;<sup>76</sup>

(...)

(2) The persons specified in subsection 1, Nos. 2 to 3b may not refuse to give evidence if they have been released from their obligation of secrecy.

#### *Section 53a [Right of Assistants to Refuse to Give Evidence]*

(1) Considered equivalent to the persons specified in section 53 subsection 1, Nos. 1 to 4 shall be their assistants and persons, while being trained for their profession participate in this professional activity. The persons specified in section 53 subsection 1, Nos. 1 to 4, shall decide whether these assistants should exercise their right to refuse to give evidence, except if such a decision cannot be obtained within a foreseeable period.

(2) Release from the obligation of secrecy (section 53 subsection 2) shall also apply to the assistants.

#### *Section 57 [Caution of Witnesses]*

Before examination, witnesses shall be admonished to tell the truth and shall be informed that their statements must be made under oath, except as otherwise permitted or provided by law. At the same time instruction shall be given on the importance of the oath, on the possibility to choose between the oath with religious affirmation or without religious affirmation, and on the criminal law consequences of incorrect or incomplete statements.

---

<sup>75</sup> Note: Similar consideration of Sundays and holidays is contained for instance in the following provisions of the Ordinance on Civil Procedure: section 188 for delivery of documents at night and on Sundays, section 216 for setting of periods ex officio and section 222 for calculating time limits. Also, for instance in section 289 of the Due Ordinance (Abgabenordnung) enforcement is ruled out on Sundays and general holidays.

<sup>76</sup> Note: This provision only applies to clergy of Christian churches and other state-recognised religious communities.

*Section 66 c [Form of Oath]*

(1) The oath with religious affirmation shall be taken in such a way that the judge addresses the following words to the witness:

»You swear by God the Almighty and Omniscient that, to the best of your knowledge, you have told the whole truth and have not concealed anything.«

whereupon the witness says the words:

»I swear, so help me God.«

(2) The oath without religious affirmation shall be taken in such a way that the judge addresses the following words to the witness:

»You swear that, to the best of your knowledge, you have told the whole truth and have not concealed anything.«

whereupon the witness says the words:

»I swear.«

(3) If a witness indicates that as a member of a religious community or of a community professing a creed he wishes to use a formula of affirmation used by this community, he/she may add it to the oath.

*Section 66 d [Affirmation Equivalent to an Oath]*

(1) If a witness indicates that he does not wish to take an oath for reasons of faith or conscience, he shall affirm the truth of his testimony. The affirmation shall be equivalent to an oath; the witness shall be informed of this fact.

(2) The truth of the testimony shall be affirmed in such a way that the judge addresses the following words to the witness:

»Aware of your responsibility before the court you affirm that, to the best of your knowledge, you have told the whole truth and have not concealed anything«

whereupon the witness says:

»Yes.«

(3) Section 66c subsection 3 shall apply mutatis mutandis.

*Section 66 e [Swearing of Mute Witnesses]*

(1) Mute persons shall take the oath in such a way that they write down and sign the following words:

»I swear by God the Almighty and Omniscient that, to the best of my knowledge, I have told the whole truth and have not concealed anything.«

Mute persons who cannot write shall take the oath by signs with the help of an interpreter.

(2) The provisions of Section 66c subsections 2 and 3 and Section 66d shall apply mutatis mutandis.

## **Chapter VIII: Seizure, Interception of Telecommunications, Computer-Assisted Search, Use of Technical Devices, Use of Undercover Investigators and Search**

### *Section 97 [Exemptions for Persons Entitled to Refuse to Give Evidence]*

(1) The following objects shall not be subject to seizure

1. written communications between the accused and the persons who, according to section 52 or section 53 subsection 1, Nos. 1 to 3b, may refuse to give evidence;
2. notes by persons specified in section 53 subsection 1, Nos. 1 to 3b, concerning information entrusted to them by the accused or concerning other circumstances covered by the right to refuse to give evidence;
3. other objects, including the findings of medical examinations, covered by the right of the persons specified in section 53 subsection 1, Nos. 1 to 3b, to refuse to give evidence.

(2) These restrictions shall apply only if these objects are in the custody of a person entitled to refuse to give evidence. (...) The restrictions of seizure shall not apply if the persons entitled to refuse to give evidence are suspected of participation or accessoriness after the fact, obstruction of justice or handling stolen goods or where the objects concerned have been generated by means of a criminal offence or have been used or are intended for use in committing a criminal offence, or where they emanate from a criminal offence.

(...)

(4) Subsections 1 to 3 shall apply *mutatis mutandis* to cases where persons mentioned in section 53a may refuse to give evidence.

(...)

### *Section 100 c [Secret Investigations]*

(1) Without the knowledge of the person concerned

(...)

2. the spoken word not spoken publicly may be bugged and recorded using technical means if certain facts substantiate the suspicion that a person has committed a criminal offence designated in section 100a and if other means of ascertaining the facts or determining the offender's whereabouts would offer no prospects of success or would be considerably more difficult,
3. the spoken word not spoken publicly by the accused in a dwelling may be bugged and recorded using technical means if certain facts substantiate the suspicion that a person has
  - a) counterfeited money or securities (sections 146, 151, 152 of the Criminal Code), counterfeited payment cards and blank Euro cheques (section 152a of the Criminal Code),  
committed aggravated trafficking in human beings in accordance with section 181 subsection 1, Nos. 2, 3, of the Criminal Code,  
committed murder, manslaughter or genocide (sections 211, 212, 220a of the Criminal Code);  
committed a criminal offence against personal liberty (section 239, 234a, 239a, 239b of the Criminal Code);

(...)

and if other means of ascertaining the facts or determining the offender's whereabouts would be disproportionately more difficult or would offer no prospects of success.

*Section 100 d [Order, Regulation on Use]*

(...)

(2) Measures in accordance with section 100c subsection 1 No. 3, may be ordered only by the criminal division of the District Court stipulated in section 74a of the Courts Constitution Act in the district where the public prosecutor's office is located. (...)

(3) A measure in accordance with section 100c subsection 1, No. 3, shall be inadmissible in cases falling under section 53 subsection 1.<sup>77</sup> (...) In cases falling under in sections 52 and 53a, information gained from measures in accordance with section 100c subsection 1, No. 3 may be used only if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in ascertaining the facts or determining the offender's whereabouts. Where the persons entitled to refuse to give evidence are suspected of participation, accessoriness after the fact, obstruction of justice or of handling stolen goods, the first sentence shall not apply; moreover, this circumstance must be taken into consideration when proportionality is assessed. A decision on the admissibility of using information shall be given during the preparatory proceedings by the court designated in the first sentence of subsection 2.

## **Second Book: Preparation at First Instance**

### **Chapter VI: Main Hearing**

*Section 249 Reading Out Documents*

(1) Certificates and other documents serving as evidence shall be read out at the main hearing. This shall apply in particular to previous criminal judgments, criminal records and extracts from parish registers and registers of births, marriages and deaths and to written records of a judicial inspection.

(...)

---

<sup>77</sup> Note: There is debate as to whether a confessional box is covered by the definition of 'dwelling' in terms of section 100c subsection 1 No. 3. The Federal Parliament Printed Matter dated 15.01.1998 No. 13/9961 p. 7 argues for the inclusion of confessional boxes in the definition of 'dwelling'. If one however rejects inclusion, bugging campaigns in accordance with section 100 c subsection 1 No. 2 of the Ordinance on Criminal Procedure are possible. Some people favour, for clericalists, in light of their special constitutional status, in general an expansion of the area of application of section 100 d subsection 3 first sentence of the Ordinance on Criminal Procedure. Accordingly, also (confidential) discussions between an accused person and a cleric outside a dwelling may be covered by the prohibition to take evidence under section 100 d subsection 3 first sentence of the Ordinance on Criminal Procedure.

***h) Ordinance on Civil Procedure (Zivilprozeßordnung)***

*of 30 January 1877 (Reich Law Gazette [RGBl.] p. 83), in the version of 12 September 1950 (BGBl. Part I pp. 455 and 533), last amended by Act of 14 December 2001 (Federal Law Gazette [BGBl.] Part I p. 3712)*

**Second Book: Proceedings at First Instance**

**Part I: Proceedings before the District Courts**

*Section 383 [Right to Refuse to Give Evidence for Professional Reasons]*

(1) The following shall be entitled to refuse to give evidence :

(...)

4. clerics<sup>78</sup> with regard to what is entrusted to them in carrying out cure of souls;

(...)

6. persons to whom facts are entrusted by virtue of their office, profession or trade, the confidentiality of which is required by their nature, or by statutory provisions concerning the facts to which the obligation of secrecy refers.

(3) Questioning of the persons designated at Nos. 4 to 6, even if testimony is not refused, shall not be concerned with facts in light of which it emerges that testimony cannot be given without violating the obligation of secrecy.

*Section 480 [Instruction]*

Prior to giving the oath, the judge shall suitably instruct the person obliged to take the oath of the significance of the oath and of the fact that he may give the oath with or without a religious affirmation.

*Section 481 [Mode of Oath-Taking]<sup>79</sup>*

(1) The oath with religious affirmation shall be given such that the judge speaks the norm of the oath with the initial wording:

»You swear by God the Almighty and Omniscient«

and the person obliged to take the oath thereupon says the words (wording of the oath):

»I swear, so help me God.«

(2) The oath without religious affirmation shall be given such that the judge speaks the norm of the oath with the initial wording:

»You swear«

---

<sup>78</sup> Note: The term 'cleric' within the meaning of this provision is the subject of contention: Some people state, this relates to the clergy of all religious communities, whilst others are of the opinion it is restricted to the priests of the public-law religious communities. In accordance with the latter view, section 383 subsection 1 No. 6 is applicable to the religious servants of other religious communities.

<sup>79</sup> Note: Subsection 3 corresponds to section 66 c subsection 3 of the Ordinance on Criminal Procedure (in the second part, item P, No. 8 (g)).

and the person obliged to take the oath thereupon says the words (wording of the oath):

»I swear it.«

(...)

*Section 483 [Oath-Taking of Mute Persons]*

(1) Mute persons who can write shall take the oath in such a way that they write down and sign the wording of the oath which contains the norm of the oath.

(2) Mute persons who cannot write shall take the oath by signs with the help of an interpreter.

*Section 484 [Affirmation Equivalent to an Oath]*

(1) If an person obliged to take an oath states that he/she does not wish to take an oath for reasons of faith or conscience he/she shall give an affirmation. Such affirmation shall be equivalent to an oath; the obligee shall be informed of this fact.

(2) The affirmation shall be given such that the judge speaks the norm of the oath as norm of affirmation with the initial wording:

»You affirm in awareness of your responsibility before the court«

and the obligee thereupon says:

»Yes«.

(3) Section 481 subsections 3 and 5 and section 483 shall apply mutatis mutandis.

## **Book VIII: Compulsory Execution**

### **Part II: Compulsory Execution in Respect of Pecuniary Claim**

*Section 811 [Exempt Property]*

(1) The following property shall not be subject to levy of execution :

(...)

7. items of work clothing, as well as service equipment, as far as they are intended to be used by the debtor, as well as in the case of civil servants, clerics, solicitors, notaries, physicians and midwives the items required to exercise their professions, including suitable clothing;

(...)

10. the books intended for use by the debtor and his/her family in the church or school or another instruction facility or in meditation at home;

(...)

*Section 882a [Time Limit - Inadmissibility - Area of Application]*

(1) Unless rights in rem are pursued, compulsory execution against the Federation or a Land in respect of a pecuniary claim may not start until four weeks after the creditor has communicated his/her intention to levy compulsory execution to the authority called upon to represent the debtor and also informed, where compulsory execution is to be effected against property

managed by another authority, the competent Minister of Finance. Receipt of the information shall be certified to the creditor on request. Where in such cases compulsory execution is to be effected by the bailiff, the bailiff shall be appointed by the execution court on application of the creditor.

(2) Execution shall be inadmissible against property that is indispensable for carrying out the public tasks of the debtor or the sale of which is opposed by a public interest. (...)

(3) The provisions contained in subsections 1 and 2 shall apply to compulsory execution against corporations, institutions and foundations under public law on condition that the legal representatives replace the authority in terms of the subsection 1. (...)

#### **Part IV: Affirmation in Lieu of Oath and Detention**

##### *Section 910 [Arrest of Civil Servants]*

Prior to the arrest of a civil servant, a cleric or a teacher at a public instruction institute, the superior public authority shall be informed by the bailiff. The arrest may not be effected until the superior authority has ensured the official deputation of the debtor. The authority shall be obliged to take the necessary measures and inform the bailiff thereof without delay.

##### **i) Court Costs Act (*Gerichtskostengesetz*)**

*of 18 June 1878 (Reich Law Gazette [RGBl.] p. 141), in the version of the proclamation of 15 December 1975 (Federal Law Gazette [BGBl.] Part I p. 3047), last amended by Act of 22 February 2002 (BGBl. Part I p. 981)*

##### *Section 2 Exemption from Costs*

(...)

(2) Other provisions of Federal law by means of which exemption in rem or personal exemption from costs has been granted in respect of proceedings before the courts of ordinary jurisdiction and the Finance and Social Courts shall remain in force. Provisions of Land law which grant an exemption in rem, or in which personal exemption from costs has been granted in respect of these proceedings shall remain unaffected.

(3) Before the courts of administrative jurisdiction and the courts for labour matters, provisions of Federal or Land law relating to personal exemption from costs shall not apply. Provisions relating to exemption in rem from costs shall remain unaffected.

##### **j) Land Judiciary Costs Act [of Baden-Württemberg] (*Landesjustizkostengesetz*)**

*of 30 March 1971 (Law and Ordinance Gazette [GVBl.] of Baden-Württemberg p. 96) in the version of 15 January 1993 (GVBl. of Baden-Württemberg p. 110, corr. p. 244), last amended by Act of 20 November 2001 (GVBl. of Baden-Württemberg p. 605)*

*Section 7 Exemption from Fees*

(1) The following shall be exempt from paying the fees levied by the courts of ordinary jurisdiction in civil matters, the authorities of non-contentious jurisdiction and the authorities of the administration of justice and the Labour Court administration:

1. churches, other religious and ideological communities, as well as their sub-associations, institutions and foundations, in each case if they are legal entities under public law;

(...)

(3) Exemption from fees in accordance with subsections 1 and 2 shall also apply to recording and certification fees. Exemption from fees in accordance with subsection 1 shall also apply to bailiff fees; fees that cannot be collected from the debtor shall be refunded by the creditor.