

Part One: Constitutions

A) Federal Level

*Basic Law for the Federal Republic of Germany*¹

of 23 May 1949 (Federal Law Gazette [BGBl.] p. 1), last amended by Act of 26 November 2001 (BGBl. Part I, p. 3219)

[Preamble]

Conscious of their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law. Germans in the Länder of Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Basic Law thus applies to the entire German people.

I. Basic Rights

Article 3 [Equality before the Law]

(...)

(3) No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

Article 4 [Freedom of Faith, Conscience and Profession]

(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

(3) No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.

Article 6 [Marriage and the Family; Children Born outside of Marriage]

(1) Marriage and the family shall enjoy the special protection of the state.

(2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.

¹ This translation is based on the official translation of the Basic Law for the Federal Republic of Germany.

(3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.

(4) Every mother shall be entitled to the protection and care of the community.

(5) Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.

Article 7 [School Education]

(1) The entire school system shall be under the supervision of the state.

(2) Parents and guardians shall have the right to decide whether children shall receive religious instruction.

(3) Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned.² Teachers may not be obliged against their will to give religious instruction.

(4) The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the Länder. Such approval shall be given when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured.

(5) A private elementary school shall be approved only if the educational authority finds that it serves a special pedagogical interest or if, on the application of parents or guardians, it is to be established as an denominational or interdenominational school or as a school based on a particular philosophy and no state elementary school of that type exists in the municipality.

(...)

Article 12a [Compulsory Military or Alternative Service]

(...)

(2) Any person who, on grounds of conscience, refuses to render military service involving the use of arms may be required to perform alternative service. The duration of alternative service shall not exceed that of military service. Details shall be regulated by a law, which shall not interfere with the freedom to make a decision in accordance with the dictates of conscience, and which shall also provide for the possibility of alternative service not connected with units of the Armed Forces or of the Federal Border Police.

² Cf. the special provision for the Land of Bremen in accordance with article 141 of the Basic Law.

II. The Federation and the Länder

Article 33 [Equal Citizenship – Professional Civil Service]

(...)

(3) Neither the enjoyment of civil and political rights, nor eligibility for public office, nor rights acquired in the public service shall be dependent upon religious affiliation. No one may be disadvantaged by reason of adherence or nonadherence to a particular religious denomination or philosophical creed.

Article 34 [Liability for Violation of Official Duty]³

If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body⁴ that employs him. In the event of intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity.

V. The Federal President

Article 56 [Oath of Office]

On assuming his office, the Federal President shall take the following oath before the assembled Members of the Bundestag⁵ and the Bundesrat⁶:

»I swear that I will dedicate my efforts to the well-being of the German people, promote their welfare, protect them from harm, preserve and defend the Basic Law and the laws of the Federation, perform my duties conscientiously, and do justice to all. So help me God.«

The oath may also be taken without religious affirmation.

VI. The Federal Government

Article 64 [Appointment and Dismissal of Federal Ministers]

(...)

(2) On taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in article 56 before the Bundestag.

³ Cf. on this also the corresponding liability provisions contained in the Civil Code (Bürgerliches Gesetzbuch) (Second Part, Item E No. 2).

⁴ Public bodies (corporations) in this sense are also religious communities organised as corporations under public law in accordance with article 140 of the Basic Law in conjunction with article 137 para 5 of the Weimar Constitution.

⁵ This term constitutes the German denotation for the Federal Parliament of Germany.

⁶ The Bundesrat is the Upper House of Parliament respectively the federal council of Germany.

XI. Transitional and Concluding Provisions

Article 116 [Definition of "German"; Restoration of Citizenship]

(...)

(2) Former German citizens who between January 30, 1933 and May 8, 1945 were deprived of their citizenship on political, racial, or religious grounds, and their descendants, shall on application have their citizenship restored. They shall be deemed never to have been deprived of their citizenship if they have established their domicile in Germany after May 8, 1945 and have not expressed a contrary intention.

Article 140 [Provisions Respecting Religious Societies]

The provisions of articles 136, 137, 138, 139, and 141 of the German Constitution of August 11, 1919 shall be an integral part of this Basic Law.

Article 136 (Weimar Constitution)

(1) Civil and political rights and duties shall be neither dependent upon nor restricted by the exercise of religious freedom.

(2) Enjoyment of civil and political rights and eligibility for public office shall be independent of religious affiliation.

(3) No person shall be required to disclose his religious convictions. The authorities shall have the right to inquire into a person's membership in a religious society only to the extent that rights or duties depend upon it or that a statistical survey mandated by a law so requires.

(4) No person may be compelled to perform any religious act or ceremony, to participate in religious exercises, or to take a religious form of oath.

Article 137 (Weimar Constitution)

(1) There shall be no state church.

(2) The freedom to form religious societies shall be guaranteed. The union of religious societies within the territory of the Reich⁷ shall be subject to no restrictions.

(3) Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.

(4) Religious societies shall acquire legal capacity according to the general provisions of civil law.

(5) Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious societies shall be granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. If two or more religious societies established under public law unite into a single organization, it too shall be a corporation under public law.

⁷ The German Empire, existing at that time, was called Reich in German.

(6) Religious societies that are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law.

(7) Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies.

(8) Such further regulation as may be required for the implementation of these provisions shall be a matter for Land legislation.

Article 138 (Weimar Constitution)

(1) Rights of religious societies to public subsidies on the basis of a law, contract, or special grant shall be redeemed by legislation of the Länder. The principles governing such redemption shall be established by the Reich.

(2) Property rights and other rights of religious societies or associations in their institutions, foundations, and other assets intended for purposes of worship, education, or charity shall be guaranteed.

*Article 139 (Weimar Constitution)*⁸

Sunday and holidays recognized by the state shall remain protected by law as days of rest from work and of spiritual improvement.

Article 141 (Weimar Constitution)

To the extent that a need exists for religious services and pastoral work in the army, in hospitals, in prisons, or in other public institutions, religious societies shall be permitted to provide them, but without compulsion of any kind.

Article 141 [Religious Instruction]

The first sentence of paragraph (3) of article 7 shall not apply in any Land in which Land law otherwise provided on January 1, 1949.⁹

⁸ For the Holiday Acts issued in this area, the example given in the second part of this collection at item P No. 4 is that of the Holidays Act of the Free Hanseatic City of Bremen.

⁹ Note: This article refers to the Constitution of the Free Hanseatic City of Bremen dated 21 October 1947 (Law Gazette [GBl.] p. 251), last amended by the Act of 1 February 2000 (Law Gazette p. 31):

Article 32

(1) The general public schools shall be interdenominational schools where the lessons in Biblical history shall be on a general Christian basis with no denominational commitment.

(2) Biblical history lessons shall only be given by teachers who have declared their willingness to do so. The parents and guardians shall decide as to children's attendance at these lessons.

(3) Churches, religious and ideological communities shall have the right to teach their confession or philosophy outside school hours to those children whose parents and guardians so wish.