

B) Land Level

1. Constitution of the Free State of Bavaria

*of 2 December 1946 (Law and Ordinance Gazette [GVBl.] of Bavaria p. 333),
in the version of the proclamation of 15 December 1998 (GVBl. of Bavaria p. 991)*

[Preamble]

Mindful of the physical devastation into which a state and social order without God, with no conscience and without respect for the dignity of man has plunged the survivors of the Second World War, in the steadfast resolution to ensure permanently for future German generations the blessings of peace, humanity and justice, the Bavarian People bestows upon itself the following democratic Constitution, bearing in mind its history dating back more than one thousand years.

Part One: Structure and Functions of the State

Article 7 [State Citizens and Their Rights]

(1) State citizenship is held by every citizen over the age of eighteen, irrespective of birth, race, sex, religion and profession.

(...)

Part Two: Basic Rights and Obligations

Article 107 [Freedom of Faith, Conscience and Creed]

(1) Freedom of religion and conscience are guaranteed.

(2) The undisturbed practice of religion shall be protected by the State.

(3) The enjoyment of civil and political rights shall not be made conditional upon or subject to a religious creed, nor shall political obligations be prejudiced by it.

(4) Eligibility for public office shall be independent of religious creed.

(5) Nobody shall be obliged to reveal their religious persuasions. The Administrative Bodies only have the right to enquire into membership of a religious community insofar as the maintenance of legally ordered rights and obligations or a legally instituted statistical survey make this necessary.

(6) Nobody shall be compelled to perform a religious act, or to participate in a religious rite or celebration, or to utter a religious confirmation of an oath.

Article 111a [Freedom of Broadcasting]

(1) Freedom of broadcasting shall be guaranteed. Broadcasting serves information by means of truthful, comprehensive and impartial reporting as well as by the dissemination of opinions. It contributes to education and entertainment. Broadcasting shall respect the basic free democratic order, human dignity, religious and philosophic persuasions. Glorification of

violence as well as productions which grossly offend general moral feelings shall be prohibited. Freedom of opinion, objectivity, mutual respect, protection against defamation as well as a balance in the entire broadcasting output product programme shall be guaranteed.

(2) Broadcasting shall be carried out in such a way that it is publicly answerable and under the direction of legally constituted public bodies. Significant political, philosophic and social groups shall be involved to an appropriate degree in the control of broadcasting. The total proportion of representatives of State Government, Land Parliament or the Senate on controlling bodies shall not exceed one third. The philosophic or social groups shall select or appoint their own representatives themselves.

(3) Details shall be the subject of a statute.

Part Three: Social Life

Article 127 [Educational Influence of Religious Communities]

The intrinsic right of religious communities and state recognised associations which foster non-religious beliefs to exert an appropriate influence of their creed or philosophy on the education of children shall be guaranteed without infringing the right of parents to bring up their children.

Article 131 [Educational Goals]

(...)

(2) The paramount educational goals are reverence for God, respect for religious persuasion and the dignity of man, self-control, the recognition of and readiness to undertake responsibility, helpfulness, receptiveness to everything which is beautiful, good and true, as well as a sense of responsibility for the natural world and the environment.

Article 134 [Private Schools]

(1) Private schools shall be obliged to meet the demands made on state schools. They may only be established and maintained with governmental approval.

(2) Approval shall be given provided the schools meet the standards of equivalent state schools with regard to their educational goals (article 131), their facilities and the academic training of their teachers, provided the economic and legal standing of their teachers is adequately secured, and provided there are no reservations against the person of the school director.

(3) Private elementary schools shall only be permitted under certain conditions. These conditions arise in particular where those entitled to bring up the children have no State school of their creed or their philosophic persuasion available.

Article 135 [State Elementary Schools]

State elementary schools shall be open to all children of school age. In them children shall be taught and educated according to the principles of the Christian creeds. Details shall be the subject of the Act on Elementary Schools (Volksschulgesetz).

Article 136 [Religious Instruction]

(1) The religious sensibilities of all shall be observed in lessons in all schools.

- (2) Religious teaching shall be a recognised subject in all elementary schools, vocational schools, in secondary and universities. It shall be taught in accordance with the fundamental beliefs of the religious community involved.
- (3) No teacher may be compelled to give or prevented from giving religious instruction.
- (4) Teachers require the authorisation of religious communities to give religious instruction.
- (5) The necessary school premises shall be made available.

Article 137 [Attendance at Religious Instruction]

- (1) Attendance at Religious Instruction and participation in church practices and festivals shall require the consent of the those entitled to bring up the child, and from the age of 18 on, the consent of the pupil.
- (2) Instruction on generally recognised fundamentals of morality shall be provided for those pupils who do not attend Religious Instruction.

Article 138 [Universities]

- (1) With the exception of ecclesiastical universities (article 150 section 1), the establishment and administration of universities shall be left to the State. Further exceptions shall require governmental approval.
- (2) Universities shall have the right of self-administration. The students shall be involved in this insofar as their interests are concerned.

Article 142 [Freedom of Association and Self-Administration]

- (1) There shall be no state church.
- (2) The freedom to congregate for family worship, public rituals and religious communities as well as their amalgamation within Bavaria shall be free within the limits imposed by the law valid for all.
- (3) Churches and recognised religious communities as well as such associations which foster non-religious beliefs whose aims are consistent with law valid for all shall be free from state patronage. They shall regulate and administer their own affairs independently within the limits of the law valid for all. They shall confer their offices without the participation of the state or the civil community.

Article 143 [Corporations under Public Law; Church Tax]

- (1) Religious communities and associations which foster non-religious beliefs shall acquire legal capacity according to the general provisions of the general law.
- (2) Churches and recognised religious communities shall remain corporations under public law if they have enjoyed that status hitherto. Other recognised religious communities and associations which foster non-religious beliefs whose aims are consistent with law valid for all shall be granted the same rights after a period in existence of five years and upon application.
- (3) Churches and religious communities, as well as associations which foster non-religious beliefs and are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists.

Article 144 [State Protection of Religion and the Clerics]

- (1) Clerics shall enjoy the protection of the state in the performance of their official duties.
- (2) Every public defamation of religion, its institutions, the priesthood or members of religious orders in their capacity as followers of a religion shall be prohibited and punishable.
- (3) Clerics may not be compelled to reveal before a court or to an Administrative Body information which has been vouchsafed to them in their capacity as providers of cure of souls.¹⁰

Article 145 [State Subsidies to Religious Communities]

- (1) Previous subsidies to religious communities by the state or political communities based on law or contract or special legal ties shall sustain.
- (2) New voluntary subsidies by the state, political municipalities or associations of municipalities to a religious community shall be effected by surcharges on state taxes and contributions to the members of the religious community.

Article 146 [Protection of Property and Other Rights]

The right to own property and other rights of religious communities, religious associations, monastic orders, congregations and associations which foster non-religious beliefs shall be guaranteed with regard to their institutions, foundations and other property for purposes of worship, education or charity.

Article 147 [Protection of Sundays and Holidays]

Sundays and holidays recognised by the state shall remain legally protected as days of spiritual edification and rest from work.

Article 148 [Religious Services and Cure of Souls in Hospitals, Prisons, etc.]

To the extent that there exists a need for religious services and cure of souls in hospitals, prisons and other public institutions, the religious communities shall be permitted, but may in no way be compelled, to perform religious acts.

Article 149 [Cemeteries; Joint Use of Churches and Cemeteries]

- (1) The municipalities shall ensure that every deceased person is buried in a fitting manner. The religious communities shall determine their own involvement themselves.
- (2) In cemeteries which are intended for particular religious communities, the burial of followers of other faiths or denominations in a way acceptable to them shall be permitted without segregation and provided no other suitable burial place is available.
- (3) In other respect, the joint use of churches and cemeteries according to hitherto valid law shall continue, insofar as no changes are effected by law.

¹⁰ Cf. on this the corresponding provisions in the Code of Criminal Procedure (Strafprozessordnung), Part Two, item P No. 8 (g)

Article 150 [Theological Universities and Faculties]

- (1) The churches shall be entitled to provide education and further education for their clerics in their own ecclesiastical universities.
- (2) The theological faculties in universities shall remain.

Conclusion and Transitional Provisions

Article 182 [Continued Validity of State Treaties]

Previously concluded treaties, in particular the treaty with the Christian churches of 24 January, 1924 shall remain in force.

2. Constitution of the Land of Brandenburg

of 20 August 1992 (Law and Ordinance Gazette [GVBl.] of Brandenburg Part I p. 298), last amended by Act of 7 April 1999 (GVBl. Bbg. I p. 98)

First Main Part: Basic Provisions

Article 2 [Principles of the Constitution]

- (1) Brandenburg is a free, democratic Land based on the rule of law, social welfare, peace and justice, the protection of the natural environment and culture, which strives towards cooperation with other peoples, and with its Polish neighbour in particular.
- (...)

Second Main Part: Basic Rights and State Aims

Article 12 [Equality]

(...)

- (2) No one may be placed at an advantage or disadvantage because of his/her race, origin, nationality, language, gender, sexual identity, social origin or position, disability, religious, ideological or political conviction.

Article 13 [Freedom of Conscience, Faith and Confession]

- (1) Freedom of conscience, of faith, and the freedom of religious and ideological confession shall be inviolable; their undisturbed exercise shall be guaranteed.
- (2) No one shall be obliged to disclose his/her religious or ideological conviction. The authorities shall only have the right to enquire as to affiliation to a religious community where rights and duties depend thereon.
- (3) No one may be forced to participate in a religious or ideological act or to use a religious form of oath.

(4) If a citizen is unable to carry out civic duties because they conflict with his/her conscience, the Land should provide him/her with the opportunity where possible to render other duties imposing a similar strain. This shall not apply to taxes and public dues.

Article 14 [Sundays and Holidays]

(1) Sundays and holidays recognised by the state shall be protected by the Land as days of rest from work.

(2) The traditions linked with Sundays and holidays shall be respected.

(3) Details shall be regulated by a law.

Article 21 [Right to Political Participation]

(...)

(2) Each person shall have the same right to access to public offices in line with their suitability, qualification and specialist performance unless otherwise stipulated for the exercise of sovereign powers. Dismissal or disciplining because of activities in civil initiatives, associations, religious communities or parties shall be inadmissible .

Article 28 [Principles of Upbringing and Education]

Upbringing and education shall have the task of promoting personal development, independent thought and action, respect for the dignity, faith and convictions of others, recognition of democracy and freedom, the desire for social justice, peaceableness and solidarity in living together between the cultures and peoples, and responsibility for nature and the environment.

Article 30 [School System]

(...)

(6) The right to establish independent schools shall be guaranteed in accordance with article 7 para 4 of the Basic Law (Grundgesetz). The organisations shall have the right to a subsidy from public funds.

Article 32 [Universities]

(...)

(2) The right to establish independent universities shall be guaranteed.

(...)

(4) In order to train their clerics, the churches shall have the right to establish and maintain their own institutions similar in nature to universities. The same shall apply to religious communities. The allocation of the chairs at the state theological faculties shall be effected in agreement with the churches.

Article 36 [Legal Status]

(1) There shall be no state church.

(2) Churches and religious communities shall regulate and administer their affairs independently within the limits of the law that is valid for all. They shall confer their offices without the participation of the state or the civil community.

(3) The Land recognises the public assignment of the churches and religious communities. They shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious communities shall be granted the same rights upon application if their constitution and the number of their members give assurance of their permanency and if they do not contradict the principles and basic rights of this Constitution named in article 2 para 1.

(4) Churches and religious communities that are corporations under public law shall be entitled to levy taxes from their members on the basis of the civil taxation lists.

(5) Associations whose purpose is to foster a ideological creed shall have the same status as religious communities.

Article 37 [Property and State Payments]

(1) The right to own property and other rights of churches, religious communities and their facilities shall be guaranteed with regard to their property for purposes of worship, education or charity.

(2) Benefits by the Land and the bearers of municipal self-administration to which the churches and religious communities are entitled in accordance with the law, a contract or other legal titles may only be dissolved by agreement. Where such agreements relate to the Land, they must be confirmed by a Land law.

Article 38 [Cure of Souls]

In homes, hospitals, prisons and similar public facilities, as well as the police, religious services, cure of souls and other religious acts by the churches and religious communities shall be facilitated in line with actual need. article 13 para 3 shall apply.

Third Main Part: The State Organisation

Article 88 [Oath]

On assuming office the Prime Minister and the Ministers of the Land Government shall take the following oath before the Land Parliament:

»I swear that I will dedicate my whole efforts to the well-being of the people of the Land of Brandenburg, promote their welfare, protect them from harm, exercise the office transferred to me according to the best of my knowledge and ability and without bias, that I will preserve and defend the Constitution and the statutes, perform my duties conscientiously, and do justice to all.«

The oath may also be taken with a religious affirmation.