

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.

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.