

## FINANCING OF RELIGIOUS COMMUNITIES IN GERMANY

Gerhard Robbers  
*University of Trier*

**Abstract:** Religious communities in Germany finance themselves to the overwhelming extent by their own financial resources. Those religious communities that have the status of a public law corporation, a special status that is explained in some detail below, can tax their members by the so-called church tax. This applies to the two big churches in Germany, the Roman Catholic Church and the Protestant churches, but also to a number of smaller religious communities. The church tax is not a state tax; the qualified religious communities levy this tax in their own right. Other religious communities that have the status of a civil law corporation usually take a membership fee or ask for voluntary contributions. Furthermore, the state gives direct subsidies to religious communities for a variety of reasons. Tax benefits further contribute to the financing of religion. Constitutional provisions also explicitly guarantee the property of religious communities.

**Keywords:** Religious communities in Germany, Church Tax, Indirect financing of Religious Communities.

**Resumen:** Las comunidades religiosas en Alemania se financian en una gran parte por sus propios recursos financieros. Aquellas comunidades religiosas que tienen la condición de corporación de derecho público, un estatuto especial que se explicará con cierto detalle a continuación, pueden cobrar impuestos a sus miembros por el así llamado impuesto eclesiástico. Esto se aplica a las dos grandes iglesias en Alemania, la Iglesia Católica Romana y las iglesias protestantes, y también a una serie de pequeñas comunidades religiosas. El impuesto eclesiástico no es un impuesto estatal, las comunidades religiosas cualificadas tasan este impuesto por derecho propio. Otras comunidades religiosas que tienen la condición de una corporación de derecho civil suelen tener una cuota de socio o solicitar contribuciones voluntarias. Por otra parte, el Estado otorga subvenciones directas a las comunidades religiosas atendiendo a múltiples razones. Las ventajas fiscales contribuyen a la financiación de la religión. Otras disposiciones constitucionales garantizan también explícitamente la propiedad de las comunidades religiosas.

Palabras clave: Comunidades religiosas en Alemania, impuesto eclesiástico, financiación indirecta a las comunidades religiosas.

SUMARIO: 1. Protection of Property.- 2. Church Tax.- 2.1. Basic Facts.- 2.2. Taxable Persons.- 2.3. Objection to Church Tax.- 2.4. Tax Rate.- 2.5. Administration of the Church Tax.- 2.6. Example: North Rhine-Westphalia.- 2.7. Religious Communities that Levy Church Tax.- 2.7.1. General Principles.- 2.7.2. Special Rights and Duties of Religious Communities as Public Law Corporations.- 2.7.3. Range of Religious Communities with Public Law Status.- 2.8. Church Due.- 2.9. Case Law.- 3. State subsidies.- 3.1. State subsidies in general.- 3.2. Specific issues of State subsidies.- 4. Examples of facts and figures.- 4.1. The Evangelical Church in Germany.- 4.2. The Evangelical Land Church in Baden.- 4.3. Archdiocese of Freiburg.- 4.4. The Jewish Faith Communities.- 5. Indirect financing of Religious Communities.

## 1. PROTECTION OF PROPERTY

The property of religious communities is guaranteed in specific ways. Article 140 GG in conjunction with Article 138 WRV<sup>1</sup> states:

- (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.

These provisions take preference over the general guarantee of property rights pursuant to Article 14 GG, which also covers the rights of religious communities:

- (1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.
- (2) Property entails obligations. Its use shall also serve the public good.
- (3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and

<sup>1</sup> GG = Grundgesetz (Basic Law = the federal constitution of Germany); WRV = Weimarer Reichsverfassung (Constitution of the Weimar Republic = the constitution of the German Reich of 14. August 1919). The so called 'church articles' of the Constitution of the Weimar Republic (Articles 136-139 and 141 WRV) have been incorporated into the current German federal constitution by Article 140 GG and constitute valid constitutional law; these norms are cited as 'Article 140 GG in conjunction with Article ... WRV'.

extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

## **2. CHURCH TAX**

### **2.1. BASIC FACTS**

Approximately 80% of the entire church budget of the two great churches in Germany is covered by the church tax; guaranteed by Article 137 section 6 WRV in conjunction with Article 140 GG. On the basis of the civil tax lists, in accordance with the law of the Länder, the religious communities that are public law corporations are allowed to levy taxes. The large churches have made ample use of this opportunity, but smaller religious communities with the status of public corporation, such as the Jewish communities, have also done so. The church tax is a tax levied by the religious communities; it is not a state tax. The church tax was instituted at the beginning of the 19th century in order to relieve the national budget of its obligations to the churches, which were in turn based on the secularization of church property.

### **2.2. TAXABLE PERSONS**

Only members of the particular religious community authorized to levy the church tax are obliged to pay. No religious community may levy taxes on other persons than their own members. Any member who does not want to pay the church tax must be able to leave the religious community<sup>2</sup>. It does not matter whether the member has already reached the age of religious maturity<sup>3</sup>. There is no church tax on legal persons; only natural persons are taxable. This follows from the fact that only members of religious communities can be taxed and legal persons cannot be members of religious communities.

### **2.3. OBJECTION TO CHURCH TAX**

Those desiring to be free of the tax may achieve that result by leaving the religious community. Withdrawal from the religious community is effected by deregistering with the proper state officials and simply means that one has, according to the state classification, officially ended one's membership of the particular religious community in question. However, most Protestant churches see the withdrawal as a withdrawal from their particular church as well. The Catholic Church, as a general rule, views the withdrawal as a serious

<sup>2</sup> BVerfG 31 Mar. 1971, BVerfGE 30, 415 et seq.

<sup>3</sup> BVerfG 30 Nov. 1983, *Neue Juristische Wochenschrift* 37 (1984): 969.

violation of the person's obligations to the church, without bringing into question the theological dimension of church membership.

#### **2.4. TAX RATE**

The rate of the church tax is between 8 (in Bavaria and in Baden-Wuerttemberg) and 9% of the individual's wage and income tax liability. Other tax standards may also be used. The percentage is calculated taking the wage and income tax liability as the basis of calculation and is then paid in addition to the amount of the wage or income tax.

In some but not all churches amounts of church tax owed that exceed a certain maximum level are cut and the exceeding part has not to be paid (*Kappungsgrenze*). This is a response to the situation of tax law options in which tax payers have to pay a very high income tax and the 8 to 9% church tax may amount to exceedingly high church tax dues.

#### **2.5. ADMINISTRATION OF THE CHURCH TAX**

Upon application of qualified religious communities, the church tax may be collected by the state on behalf of the religious community along with the normal state wage and income tax. In doing so, the state offers a service to the religious community; the church tax remains a tax of the religious community only and does not become a state tax. The state hands over the income of the church tax to the relevant religious community. For this service the religious community has to remunerate the state. This emolument varies from Land to Land. In Rhineland Palatinate it amounts to 4% of the church tax income, in Baden Wuerttemberg it is 3% of the church tax income.

#### **2.6. EXAMPLE: NORTH RHINE-WESTPHALIA**

The (Land) Act on Collection of Church Taxes in the Land North Rhine-Westphalia (*KiStG NRW*) provides the details on the church tax for the Land North Rhine-Westphalia. It is representative of the various laws on church tax in the German *Länder*. According to this law, the Catholic Church and the Protestant Church levy church taxes in the Land North Rhine-Westphalia on the basis of their own tax regulations. Church taxes may be levied in accordance with tax regulations as diocesan church tax or Land church tax, as local church tax, and simultaneously as diocesan church tax or Land church tax and local church tax. The tax regulations are issued by the Dioceses of the Catholic Church and the Protestant Land churches.

The corporation competent in accordance with the tax regulations determines the amount of the church taxes to be levied.

All members of the Catholic Church and the Protestant Church who are

residents or have their habitual place of residence in the Land North Rhine-Westphalia are liable to church tax. Liability to pay church tax terminates with resignation from the church declared in accordance with the valid state provisions on expiry of the calendar month in which the declaration of resignation from the church has become effective.

Church taxes may be levied as a supplement to income tax and wage tax, also with setting minimum amounts. It can also be levied in accordance with income on the basis of a special tariff (church tax on income). Furthermore, the church tax may be levied as a supplement to property tax (church tax on property), as a supplement to the real property tax assessment amounts (church tax on real property), as general church dues, and finally as special church dues by church taxpayers whose spouses are not liable to church tax.

Prior to calculating the church tax as a supplement to income and wage tax the proper income tax and wage tax is ascertained in accordance with general income tax law.

If the liability to pay church tax does not pertain during the whole calendar year, for each calendar month in which the liability to pay church tax pertains, in general one-twelfth of the amount is levied, which would result as annual tax liability if the liability to pay church tax were to pertain for the whole year.

If spouses belong to different churches entitled to levy taxes (inter confessional marriages) and if the conditions apply for a joint income tax declaration both churches levy the church tax in the form of the supplement to income and wage tax from both spouses. In this case, the church tax for each individual spouse is based on half the income or wage tax that both spouses owe to the state. The spouses then are jointly and severally liable. If the conditions do not apply for a joint income tax assessment, or if the spouses are taxed separately or specially, the church tax is levied from the income of each spouse in accordance with his or her church affiliation and with the tax assessment basis applying to them personally.

If only one spouse belongs to a church entitled to levy taxes (inter faith marriage), the church entitled to levy taxes levies the church tax in accordance with the tax assessment basis relating to that person.

If such spouses are taxable together for income tax, the church tax of the spouse liable to pay tax is proportionally calculated in the shape of the supplement to income tax. The church tax is calculated in accordance with the part of the joint income tax incurred by the spouse liable to pay tax if the joint tax in the ratio of the income tax amounts that would emerge on the income of each spouse is distributed between the spouses.

Provisions about interest, delay penalties, criminal and administrative

finances, and criminal and administrative fine procedures are not applicable to the church tax.

The churches are competent for respite and abatement of the church taxes. They may transfer these powers to the finance offices or the municipalities.

Upon application of the Dioceses of the Catholic Church, or upon application of the Protestant Land churches, the ministry competent for the Land finance administration assigns to finance offices the administration of church taxes on income and assets and of the special church dues. If the church tax on income is levied because of a special tariff or as special church dues, the obligation to transfer only pertains with regard to taxpayers liable to income or wage tax. In the other cases –with the exception of general church dues– the administration of church tax may be assigned to the finance offices.

Undertaking of administration is effected for an emolument that is to be agreed.

Where church tax on income is administered by the finance offices, employers whose establishments are in the Land are obliged to collect the church tax from all Catholic and Protestant employees with residence or habitual place of residence within the Land in the amount of the relevant tax rate for the place of the establishment and to pay it to the finance office competent for the employer.

Upon application of Dioceses of the Catholic Church or of Protestant Land churches whose area wholly or partly lies outside the Land, the ministry competent for the Land finance administration in agreement with the ministry competent for church matters may order the collection and payment of church tax using the wage deduction procedure also for those employees who are liable to pay tax to these churches who do not have their residence or habitual place of residence in the Land, but are paid by an establishment in the Land. If the tax rates at the place of residence are lower than at the establishment, the application shall only be approved if it is ensured that too much collected church tax will be refunded. If another tax rate applies to the residence or habitual place of residence of employees than to the place of the establishment, the finance office of the establishment may upon application permit the employer to collect and pay the church tax of these employees in accordance with the tax rate applicable at the residence or habitual place of residence. The decision of the finance office requires the consent of the Diocese of the Catholic Church and the Protestant Land Church in whose area the employer maintains the establishment for its effectiveness.

The church tax on real property may upon application of the corporation competent in accordance with the Ordinance on Dues be administered by the municipalities (municipal associations).

Administration is also in this case carried out for an emolument that is to be agreed.

If the church tax is administrated by the churches themselves, the church tax including additional payment will upon application be collected by the finance offices in accordance with the provisions of the Ordinance on Dues or by the municipal law enforcement authorities where these collect the base tax, in accordance with the provisions of the administrative executory procedure.

The competent Land or municipal authorities provide the churches upon request with the documents required for taxation and for church financial equalization.

The taxpayer is entitled to file an objection to collection of church tax as an out of court legal recourse which has to be submitted within a period of one month from announcement of the tax notice to the agency stated in the Ordinance on Taxes. If the tax is collected by means of wage deduction, the objection is admissible until expiry of the calendar month following the wage payment period in which the deduction has been effected. Recourse to the state Finance Courts is available.

The same rules apply *mutatis mutandis* to religious communities, which have the rights of a corporation under public law.

The obligation to transfer the administration of church taxes to the finance offices applies in this case if the religious community entitled to levy taxes has at least 40,000 members in the Land<sup>4</sup>, the religious community entitled to levy taxes collects the church tax in accordance with the same tax rates as the churches entitled to levy taxes, and –where there are religious communities with the same confession in the Land– these all collect taxes in accordance with uniform principles.

The church tax regulations and resolutions require state recognition.

## **2.7. RELIGIOUS COMMUNITIES THAT LEVY CHURCH TAX**

### **2.7.1. General Principles**

Religious and belief communities that have the special status of a corporation under public law can levy the church tax. Quite a number of religious communities have this status; it is not restricted to Christian or traditional churches and religious communities. According to Article 137 section 5 WRV in conjunction with Article 140 GG:

Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious socie-

---

<sup>4</sup> This minimum number applies for the Land North Rhine-Westphalia; it is different in other Länder.

ties shall be granted the same rights upon application, if their constitution and number of 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.

This status as a public law corporation is the second tier in the two-tier system of legal entity statuses of religious communities, the other tier being the normal status of an association under civil law.

Status under public law today means public acceptance of the religious factor in public life. It signifies the public and public law role of religion. The public law status declares religion to be a good and important part of public life. It does not incorporate the religious bodies concerned into government organization. On the contrary, the Federal Constitutional Court has held that this status does stress the very independence and autonomy of the religious bodies concerned<sup>5</sup>. There is no state church (Article 137 section 1 WRV). Unlike most other public law corporations, religious communities with this status are not integrated into the state structure. They retain their complete independence, even as public corporations. Under this legal norm, no particular identification of religious communities with the state (or vice versa) is intended. Quite to the contrary, by providing the status of a public law corporation the state acknowledges that the religious communities form a part of good, public life. Even more so, the public law status of religious communities signifies that the state does not monopolize the public law domain; the state has to share that field. This legal structure is an expression of the idea that the state is not total and is not all-encompassing even in the field of public law. These structures are therefore anti-total and, in fact, anti-totalitarian.

It may be worth noting that there are other institutions that have the status of public law entities but are not religious communities or state organizations. This, for example, is the case for the Bavarian Red Cross, which is a corporation of public law<sup>6</sup>. Many other organizations have been conferred the status of public law entities in order to provide them with a sometimes far reaching independence from state structures, while they may be regarded as remaining in some special relation to the state. This applies, for example, to public media so to remain independent from government interference; it also applies for public pension and health insurance institutions.

<sup>5</sup> Per toto: BVerfGE 31 Mar. 1971, BVerfGE 30, 415, 428.

<sup>6</sup> 'Satzung of 21 July 2001', as amended on 4 Feb. 2009, available at Bayerisches Rotes Kreuz (ed.), <<http://www.brk.de/Niederbayern-Oberpfalz/Tirschenreuth/ehrenamt/bereitschaften/bereitschaft-baernau/interner-bereich/Satzung.pdf/view>>, 6 Jul. 2010.



Membership in a religious community that is a corporation under public law is acquired by the act prescribed by the religious community. This means that in case of Christian churches, baptism or re-entry after having left the community before is the basic relevant act; the religious community keeps its membership register and informs the state authorities if necessary.

Leaving a religious community that is a corporation under public law is governed by the law of the Länder as far as effects in state law are concerned. An example is the Act Governing Resignation from the Churches, Religious Communities and Ideological Communities under Public Law of North Rhine-Westphalia (KiAustrG NRW). Pursuant to its § 1, resignation from a church or another religious or ideological community under public law with effect for the sphere of the state is effected by making a declaration to the Local Court in whose area the declarer has his or her residence, or, lacking a residence, habitual place of residence.

According to § 2 KiAustrG NRW, resignation may be declared by the person resigning if he or she has reached the age of 14 and is not incapable of entering into legal transactions. For children aged below 14 and for those who are incapable of entering into legal transactions, the legal representative with personal custody can declare the resignation. If the legal representative is a guardian or curator, he or she must acquire the Family Court's approval. If a child has reached the age of 12, his or her resignation may only be declared with his or her consent.

As § 3 KiAustrG NRW provides, the declaration of resignation may be given orally or in writing. The church, religious or belief community from which the declarer wishes to resign must be clearly designated. Proof of affiliation shall not be required. The declaration of resignation must state the last name, first names, date and place of birth, residence, and marital status. In order to avoid confusion with religious and theological questions, the declaration of resignation may not contain reservations, conditions, or supplements. The oral declaration must be made for the record of the registrar of the competent Local Court. The written declaration must be submitted as an individual declaration in publicly certified form. A declaration of resignation by an empowered representative is inadmissible. As to the effects of the declaration, § 4 KiAustrG NRW provides that with the effectiveness of the declaration of resignation, for the area of state law all and any rights and duties based on personal affiliation to the church, religious or ideological community shall be ceased. The declaration of resignation becomes effective on expiry of the day on which the record of the declaration of resignation has been signed or on which the written declaration is received by the Local Court. The end of the duty to pay church tax as a consequence of resignation from the church is

governed by the Act on Collection of Church Taxes in the Land North Rhine-Westphalia (KiStG NRW). Legal duties not based on personal affiliation to the church, religious or ideological community, in particular burdens for which particular plots of land are liable by reason of a specific legal title, remain unaffected by the declaration of resignation. Pursuant to § 5 KiAustrG NRW, the Local Court issues the person resigning with a resignation certificate without delay after submission of the declaration of resignation. The certificate states when the declaration of resignation became effective. The Local Court also informs the church, religious or belief community without delay by sending a certified copy of the declaration of resignation. It communicates resignation to the registration authority competent for the residence of the person resigning and the registrar keeping the family book or, if no family book or life partnership book is set up, the registrar who certified conclusion of marriage or the conclusion of a life partnership. A fee is taken by the state authorities in North Rhine-Westphalia, but not in all Länder, for the administrative act; the Federal Constitutional Court has held this to be in conformity with the Basic Law, especially with freedom of religion or belief<sup>7</sup>.

The Federal Constitutional Court has held in 1980 that it violated freedom of religion or belief if a period of one month is prescribed before the declaration of resignation is taking effect<sup>8</sup>. Such a period had been provided for in order to give the resigning member some time to think about his or her decision and also to give the religious community a chance to speak with the resigning member about his or her motives. Today no such time period exists, and the declaration of resignation becomes effective immediately. For reasons of administrative practicability any existing duty to pay church tax ends with the end of the month that follows the month in which the declaration has been filed<sup>9</sup>.

### **2.7.2. Special Rights and Duties of Religious Communities as Public Law Corporations**

Religious communities as public law corporations enjoy a number of specific rights to which specific duties correlate. This includes the right to tax their own members: According to the explicit rule in Article 137 section 6 WRV in conjunction with Article 140 GG, those religious societies that are public law corporations are entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law. Religious communities that have the status of a public law corporation can enforce the payment of the taxes due by

<sup>7</sup> BVerfG 2 Jul. 2008, *Neue Juristische Wochenschrift* 61 (2008): 2978 et seq.

<sup>8</sup> BVerfG 7 Oct. 1980, BVerfGE 55, 32 et seq.; see also BVerfG 8 Feb. 1977, BVerfGE 44, 37 et seq.; BVerfG 8 Feb. 1977, BVerfGE 44, 59 et seq.

<sup>9</sup> BVerfG 8 Feb. 1977, BVerfGE 44, 37 et seq.; BVerfG 8 Feb. 1977, BVerfGE 44, 59 et seq.

way of public administrative action<sup>10</sup>.

Other duties beyond taxation are the right to have civil servants: Religious communities that have the status of public law corporations can structure the management of their services in a way similar to the state in regard of their staff.

Public law religious communities also have the right to create public property in a specific sense (*res sacrae* and others) which then enjoys special protection for the public use it is assigned to such as church buildings or sacred objects<sup>11</sup>.

In addition, there is the right of access to public registration files of inhabitants: Religious communities that are public law corporations are integrated into the public registration system. They are informed by the state registration authorities about changes of residence of their members<sup>12</sup>.

The protection of § 132a of the Criminal Code (StGB) against misuse of titles, professional designations, and insignia also applies to religious communities that are public law corporations. § 133 Criminal Code protects public law religious communities against breach of official custody. § 132 Criminal Code protects also religious communities as public corporations against unlawful assumption of public office when they perform public activities such as issuing certificates or entries into church books, because their offices, while not state offices, are public offices<sup>13</sup>. § 126 section 1 number 2 of the Administrative Offences Act (OWiG) makes it an administrative offence if someone who is unauthorized wears official costumes or insignia of a religious association recognized by a church or another religious community under public law.

Religious communities with the public law status enjoy exemption from the general law of insolvency: Religious communities that are public law corporations are not subject to the general law on insolvency.

They have the right to create public documents: Religious communities

---

<sup>10</sup> BVerfG 14 Dec. 1965, BVerfGE 19, 206, 217; Dirk Ehlers in *Grundgesetz. Kommentar*, ed. Michael Sachs, 5th edn (Munich: C.H. Beck, 2009), Art. 140/137 WRF n. 31.

<sup>11</sup> Axel Freiherr von Campenhausen & Heinrich de Wall, *Staatskirchenrecht*, 4th edn ed. (Munich: C.H. Beck, 2006), 260 et seq.; Paul Kirchhof, 'Die Kirchen als Körperschaften des öffentlichen Rechts', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson, vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994), 672.

<sup>12</sup> See, e.g., §§ 32, 10 Registration Act of Rhineland-Palatinate (MG RLP).

<sup>13</sup> See, however, BGH 9 Oct. 1990, *Neue Juristische Wochenschrift* 1991: 367; Olaf Hohmann in *Münchener Kommentar zum Strafgesetzbuch*, ed. Bernd von Heintschel-Heinegg, 1st edn (Munich: C.H. Beck, 2005), § 132 n. 10; Peter Cramer & Detlev Sternberg-Lieben in *Strafgesetzbuch. Kommentar*, ed. Adolf Schönke & Horst Schröder, 27th edn (Munich: C.H. Beck, 2006), § 132 n. 4; Michael Heuchemer in *Beck-Onlinekommentar*. StGB, ed. Bernd von Heintschel-Heinegg, 9th edn, 15 Jun 2009.

that have the status of a public law corporation have the right to authenticate documents within the range of their competencies<sup>14</sup>.

Religious communities with public law status have the 'parochial right' (Parochialrecht): Members of religious communities that are public law corporations who move their residence within the Federal Republic of Germany become automatically members of the parish of his or her new place of residence<sup>15</sup>. They do not have to register with the new parish. This explains the integration of the religious public law corporations into the general public registration system.

Religious communities that are public law corporations also enjoy special treatment in tax law. According to a generally applicable definition in § 54 section 1 Fiscal Code (AO) a corporation pursues ecclesiastical purposes if its activities aim to selflessly promote a religious community that is a corporation under public law. These purposes include in particular the establishment, equipment, and maintenance of houses of God and church community buildings, holding religious services, training of clerics, giving religious instruction, burial and care for the remembrance of the dead, as well as the administration of church assets, payment of clerics, church civil servants and church servants, old age and disabled pensions for these persons, and pensions for their widows and orphans. While religious purposes of religious communities that are civil law corporations enjoy a very similar protection by general provisions, this special mentioning of public law corporations intensifies the status of those public law corporations.

As is stated in § 3 section 1 numbers 4, 5, and 6 Act on Real Property Tax (GrStG), religious communities under public law and all Jewish faith communities are in general exempt from real property tax.

Religious communities that are public law corporations are exempt from Corporate Gains Tax according to § 5 section 1 number 9 Corporate Gains Tax Act (KStG).

Pursuant to § 4 numbers 18 and 27 Turnover Tax Act (UStG) specific services of religious communities that are public law corporations are exempt from turnover tax; while § 4a section 1 Turnover Tax Act grants upon request a tax refund to compensate for the tax levied on them in respect of received delivery of certain items and under specific conditions.

According to § 3 number 6 Trade Tax Act (GewStG) religious communities that are public law corporations are, to a certain extent, exempt from trade

<sup>14</sup> Axel Freiherr von Campenhausen & Heinrich de Wall, *Staatskirchenrecht*, 4th edn (Munich: C.H. Beck, 2006), 268.

<sup>15</sup> Paul Kirchhof, 'Die Kirchen als Körperschaften des öffentlichen Rechts', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994). 671 et seq.

tax: Corporations, associations of persons, and estates which in accordance with their statutes, the act of foundation or other constitution, and in accordance with the actual management of business exclusively and directly pursue ecclesiastical ends are exempt from trade tax. This does not apply to the extent that they operate an economic business establishment – with the exception of agriculture and forestry.

Legacies to domestic religious societies under public law or domestic Jewish faith communities are exempt from inheritance tax as is provided for in § 13 section 1 number 16 Act on Inheritance Tax and Gifts Tax (ErbStG). This applies to Jewish faith communities regardless of their public or private law status; other private law religious communities are exempt from inheritance tax under special provisions.

According to the Laws on Administrative Fees religious communities that are public law corporations do not have to pay administrative fees for state official acts when these acts serve directly those church aims (functions) stipulated in § 54 AO (§ 8 section 1 number 5 Act on Administrative Fees of North Rhine-Westphalia (GebG NRW)).

Forestry management is regulated in laws of the Länder. Special provisions apply for forests owned by public law corporations such as local communities. These special rules, however, do not apply to religious communities that are public law corporations and which sometimes still are the owners of some amount of forest (e.g., § 38 Land Forest Act North Rhine-Westphalia (FoG NRW)).

While in general the sale of agricultural and forestry real property requires a permission by the state authorities, this is pursuant to § 4 number 2 Real Property Transactions Act (GrdstVG) not needed when the buyer is a religious community with the rights of a public law corporation; however the permission remains necessary when an agricultural or forestry undertaking is concerned.

Religious communities that are public law corporations enjoy a special status equivalent to the state in matters of a judicial execution of a pecuniary claim as is stated in § 882a Code of Civil Procedure (ZPO). Unless rights in rem are pursued, coercive execution against corporations, institutes and foundations under public law in respect of money receivable may not start until four weeks after the creditor has communicated his or her intention to pursue coercive execution. Coercive execution is not permissible against items that are indispensable for carrying out the public tasks of the debtor or the sale of which is opposed by a public interest. In the context of religious communities this is not limited to *res sacrae* but includes all chattel indispensable for their welfare duties<sup>16</sup>.

<sup>16</sup> BVerfG 13 Dec. 1983, BVerfGE 66, 1, 23; Udo Becker, in *Kommentar zur Zivilprozessordnung*

When state subsidies are given to a legal person of public law the receiving legal person is in general subject to an auditing of accounts by the Federal Audit Office. Religious communities that are public law corporations are exempt from such auditing as are the Federal Republic, the Länder and the local communities as is stated in § 55 section 1 Budgetary Principles Act (HGrG).

Persons who work on an honorary basis for religious communities that are public law corporations are by law insured in the accident insurance system (§ 2 section 1 number 10 Social Code VII – Statutory Accident Insurance (SGB VII)).

Some other provisions that are sometimes said to be part of the special rights of public law religious communities in fact protect all religions regardless of their legal status. This applies, for example, to § 7 clause 2 Act on Limitations of Real Estate for Reasons of Military Defence (SchBerG)<sup>17</sup>, by which the use of land can be restricted for military defence purposes; religious needs must be taken into account when applying the law.

In some other cases, special rights are attributed to specific religious communities regardless of their status as public law corporations. An example is § 8 section 3 Act on the West German Broadcasting Organization Cologne (WDRG NRW). The law states that appropriate broadcasting times have to be granted to the Protestant Church, the Catholic Church and the Jewish Faith Communities to broadcast worship services and ceremonies and other religious programmes. While these religious communities in fact are public law corporations, other religious communities with the same status do not enjoy these rights. These rights are not specifically attached to the public law status.

While certain rights are explicitly granted to religious communities that are public law corporations, other religious communities enjoy similar rights by way of general provisions. This is the case in the field of tax benefits: Some of those are explicitly granted to religious communities that have the status of public law corporations, the other religious communities enjoy equivalent benefits as far as they pursue general charity or religious ends. Such a situation exists in § 3 number 6 Trade Tax Act; § 13 section 1 number 16 Act on Inheritance Tax and Gifts Tax; § 5 section 1 number 9 Corporate Gains Tax Act; § 4 numbers 18 and 27, and § 4a section 1 Turnover Tax Act. The advantage for religious communities with the status of a public law corporation is that they benefit based on their general status, while for other religious communities the benefit depends on the decision in the individual case.

*mit Gerichtsverfassungsgesetz*, ed. Hans-Joachim Musielak, 6th edn (Munich: Franz Vahlen, 2008), § 882a n. 6.

<sup>17</sup> Dirk Ehlers in *Grundgesetz. Kommentar*, ed. Michael Sachs, 5th edn. (Munich: C.H. Beck, 2009), Art. 140 n. 21; Axel Freiherr von Campenhausen & Heinrich de Wall, *Staatskirchenrecht*, 4th edn (Munich: C.H. Beck, 2006), 267.

### **2.7.3. Range of Religious Communities with Public Law Status**

There are religious communities that have the status of public law corporations by constitutional law (the 'old incorporated religious communities'); the status can also be acquired on application (the 'newly incorporated religious communities').

Religious communities that had the status of public law corporations at the time when the Weimar Constitution came into force on 14 August 1919 (the old incorporated religious communities) remain within this status as is explicitly stated in Article 139 section 5 WRV in conjunction with Article 140 GG. This is the case for the big Christian churches such as the Protestant Church and the Roman Catholic Church, but also for the Jewish faith communities.

Special laws have taken care of the situation of the Jewish population that had survived the murderous times of Nazi rule. These laws have structured the legal status of the Jewish faith communities confirming their status of public law corporations as far as these communities wanted to have this status. For example, according to § 4 Land Act on the Jewish cult communities in Rhineland Palatinate (JüdKGemG RLP) the Jewish cult associations that had their seat before 1 January 1938 on the territory of today's Land Rhineland Palatinate and that were recognized as corporations under public law were legally dissolved with the taking effect of that Act. The rights and obligations of those cult communities have at the same time passed by way of law to the Jewish cult communities that are enumerated in that Act.

Religious communities that are not already public law corporations have the right to be granted the same rights upon application if their constitution and the number of their members give assurance of their permanency as is stated in Article 137 section 5 WRV in conjunction with Article 140 GG. There has to be sufficient reason for the prognostic assumption that the religious community will exist also in the future<sup>18</sup>. This requirement draws its legitimacy from the rights and duties that are attached to this public law status; especially some of those duties cannot be fulfilled if the permanent existence of the religious community cannot be assumed.

To be constituted as a religious corporation under public law the association has to be a religious one or a body of ideological creed (*Weltanschauungsgemeinschaft*, belief community).

The association has to have its organizational seat within Germany. There is no requirement as to the nationality of the members or governors of the association.

There has to be an application by the religious community. The status of a public law corporation cannot be attributed to a religious community against

<sup>18</sup> BVerfG 19 Dec. 2000, BVerfGE 102, 370, 384 et seq.

its own will. The application is made to the Ministry of Culture of the Land where the association wants to become a public law corporation.

In some Länder the public law corporation is established by law, in others by ordinance, again in others –and most– lands by administrative act. There is no registration file.

The applicant has to have a constitution. In the context of Article 137 section 5 WRV in conjunction with Article 140 GG the term ‘constitution’ does not only mean a written statute, but also the factual and secure general state of the community –a status of quality<sup>19</sup>. It is the factual general state of the religious community that can reasonably provide a basis on which to judge the probability that the community will exist also in the future. This notion of quality was also meant by the National Assembly of Weimar when it made the 1919 Weimar Constitution that focused not on a mere formal requirement but on ‘the deeper element of the content of the constitution’<sup>20</sup>.

A sufficient legal organization is a necessary, but not a sufficient condition to be the basis for expecting a permanence of the association. Also necessary are sufficient financial means to meet the manifold financial requirements that are linked with the status of a public law corporation<sup>21</sup>. The religious community that applies for the status of a public law corporation needs sufficient financial resources, because otherwise it will not be able to exist for a reasonable amount of time. Furthermore, the courts require some intensity of the religious life of the community in the absence of which continuity of the organization as a religious one would be endangered<sup>22</sup>.

The religious community has to have a certain number of members. Most Länder in fact require as a minimum number of members one per thousand of

<sup>19</sup> Ibid.; general opinion, cf., e.g., Axel Freiherr von Campenhausen in *Kommentar zum Grundgesetz*, ed. Hermann von Mangoldt, Friedrich Klein & Christian Starck, 5th edn (Munich: Vahlen, 2005), Art. 140 GG/Art. 137 WRV n. 244; Dirk Ehlers in *Grundgesetz. Kommentar*, ed. Michael Sachs, 5th edn (Munich: C.H. Beck, 2009), Art. 140/Art. 137 WRV n. 27; Hermann Weber, ‘Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften’, *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 337, 350; OVG Berlin 14 Dec. 1995, *Neue Zeitschrift für Verwaltungsrecht* 15 (1996): 478.

<sup>20</sup> Deutsche Nationalversammlung (ed.), *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung*, vol. 329 (Berlin: Druck und Verlag der norddeutschen Buchdruckerei, 1920), 2159.

<sup>21</sup> BVerfG 19 Dec. 2000, BVerfGE 102, 370, 384 et seq.; BVerfG 13 Dec. 1983, BVerfGE 66, 1, 24; OVG Berlin-Brandenburg, 14 Dec. 1995, *Neue Zeitschrift für Verwaltungsrecht* 15 (1996): 478, 480; VG Munich 13 Oct. 1982, *Zeitschrift für evangelisches Kirchenrecht* 29 (1984): 628, 630 et seq.

<sup>22</sup> BVerfG 19 Dec. 2000, BVerfGE 102, 370, 384 et seq.; BVerfG 13 Dec. 1983, BVerfGE 66, 1, 24; OVG Berlin-Brandenburg, 14 Dec. 1995, *Neue Zeitschrift für Verwaltungsrecht* 15 (1996): 478, 480; VG Munich, 13 Oct. 1982, *Zeitschrift für evangelisches Kirchenrecht* 29 (1984): 628, 630 et seq.



the total number of inhabitants of the respective area<sup>23</sup> or the Land<sup>24</sup>. This is a matter merely of administrative practice based on a recommendation of the Conference of Ministers of Culture<sup>25</sup>. There is no law that would require such a percentage.

Since religious communities with the status of a public law corporation have specific public law rights and duties, religious communities can obtain this status only when they can reasonably be expected that they will be able to continuously meet the requirements that follow from this status<sup>26</sup>. Such public law rights and duties exist towards the members of the religious communities such as the right to levy church taxes, but they also exist in view of the general public such as the right to create public things. The decision about awarding the status of a public law corporation to a religious community thus also entails reasons of protection of third persons.

The applicant has to have an ordinary administration by which the religious community can meet the demands that go with this special status<sup>27</sup>.

According to a general opinion in legal doctrine and court practice following the Federal Constitutional Court's decision on Jehovah's Witnesses<sup>28</sup> it is also required that the religious association be loyal to the law.

<sup>23</sup> VG Halle 22 Nov. 2001, KirchE 39, 390 et seq.

<sup>24</sup> Dirk Ehlers in *Grundgesetz. Kommentar*, ed. Michael Sachs, 5th edn (Munich: C.H. Beck, 2009), Art. 140/Art. 137 WRV n. 27; Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 354; Dieter Radtke, 'Religions- und Weltanschauungsgemeinschaften mit dem Status einer Körperschaft des öffentlichen Rechts in Niedersachsen', *Niedersächsische Verwaltungsblätter* 6 (1999): 34; Paul Kirchhof, 'Die Kirchen als Körperschaften des öffentlichen Rechts', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson, vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994), 686.

<sup>25</sup> Empfehlungen der Kultusministerkonferenz über die Verleihung der öffentlichen Körperschaftsrechte an Religionsgesellschaften und Weltanschauungsvereinigungen of 12 Mar. 1954, published in Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 377 et seq.; see also Paul Kirchhof, 'Die Kirchen als Körperschaften des öffentlichen Rechts', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson, vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994), 686; Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 354; OVG Berlin 17 Apr. 1969, OVG Berlin AS 10, 105, 111.

<sup>26</sup> BVerfGE 102, 370, 388; Paul Kirchhof, 'Die Kirchen als Körperschaften des öffentlichen Rechts', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson, vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994), 682.

<sup>27</sup> No. 2 of Erläuterungen der für kirchliche Angelegenheiten zuständigen Ressorts zu den Empfehlungen der Kultusministerkonferenz vom 12. März 1954 über die Verleihung der öffentlichen Körperschaftsrechte an Religionsgesellschaften und Weltanschauungsvereinigungen of 12 Oct. 1962, published in Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 378 et seq.

<sup>28</sup> BVerfG 19 Dec. 2000, BVerfGE 102, 370 et seq.

Further necessary is a certain time of existence because a newly founded association in general does not offer the assurance of permanency<sup>29</sup>. The courts have required in general a time of 30 to 40 years of existence, which is equivalent to one change of generations<sup>30</sup>. Some demand an existence of two generations or two changes of generations<sup>31</sup>.

Assurance of permanency is not given when the ratio of old people in the community is so high that there is a persistent danger that the community will soon cease to exist<sup>32</sup>.

All these criteria have to be applied in view of the individual case. Each one of them only indicates the existence or non-existence of the permanency of the religious community. A merely formal or automatic application of these criteria would be wrong and would not meet the intentions of the law. What is required is a general assessment of the chances of the religious community to permanently exist. In performing this general assessment the state authorities must not turn to criteria that are beyond the evaluation competence of the religiously and philosophically neutral state<sup>33</sup>. The religiously neutral state must not evaluate the religious ideas and convictions of a religious community.

The religious communities with large memberships in Germany, and also a considerable number of the smaller religious communities, have the status of public law corporations. The same applies to belief communities.

---

<sup>29</sup> *Ibid.*, BVerfGE 102, 370, 384 et seq.; BVerfG 13 Dec. 1983, BVerfGE 66, 1, 24; OVG Berlin-Brandenburg 14 Dec. 1995, *Neue Zeitschrift für Verwaltungsrecht* 15 (1996): 478, 480; VG Munich 13 Oct. 1982, *Zeitschrift für evangelisches Kirchenrecht* 29 (1984): 628, 630 et seq.

<sup>30</sup> BVerfG 19 Dec. 2000, BVerfGE 102, 370 et seq.; OVG Berlin-Brandenburg 6 Jun. 2000, *Neue Zeitschrift für Verwaltungsrecht. Rechtsprechungsreport* 13 (2000): 604 et seq.; VG Halle 22 Nov. 2001, KirchE 39, 390 et seq.; OVG Berlin 14 Dec. 1995, *Neue Zeitschrift für Verwaltungsrecht* 15 (1996): 478 et seq.; Dirk Ehlers in Grundgesetz. Kommentar, ed. Michael Sachs, 5th edn (Munich: C.H. Beck, 2009), Art. 140/Art. 137 WRV n. 27; Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 352.

<sup>31</sup> Axel Freiherr von Campenhausen & Heinrich de Wall, *Staatskirchenrecht*, 4th edn (Munich: C.H. Beck, 2006), 135 fn. 66.

<sup>32</sup> No. 2 b) of Empfehlungen der Kultusministerkonferenz über die Verleihung der öffentlichen Körperschaftsrechte an Religionsgesellschaften und Weltanschauungsvereinigungen of 12 Mar. 1954, published in Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 377 et seq.; Paul Kirchhof, 'Die Kirchen als Körperschaften des öffentlichen Rechts', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson, vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994), 686; Hermann Weber, 'Die Verleihung der Körperschaftsrechte an Religionsgemeinschaften', *Zeitschrift für evangelisches Kirchenrecht* 34 (1989): 354; OVG Berlin-Brandenburg 17 Apr. 1969, OVG Berlin AS 10, 105, 111.

<sup>33</sup> BVerfG 19 Dec. 2000, BVerfGE 102, 370, 384 et seq.

Religious and Belief Communities with Public Law Status<sup>34</sup>

1. Evangelische Kirche	1. Protestant Church
Evangelische Landeskirchen	Protestant Land churches
Evangelische Kirche in Deutschland (EKD)	Evangelical Church in Germany (EKD)
Evangelisch-Reformierte Kirche	Protestant-Reformed Church
Kirchengemeinden und die aus ihnen gebildeten Verbände	Parishes and their associations
	2. Catholic Church
(Erz-)Bistümer bzw. (Erz-)Diözesen der römisch-katholischen Kirche	(Arch-)Bishoprics and (Arch-)Dioceses of the Roman Catholic Church
Verband der Diözesen Deutschlands (Zusammenschluss der Erdiözesen und Diözesen zur Wahrnehmung von Aufgaben im rechtlichen und wirtschaftlichen Bereich)	Union of the Dioceses of Germany (Union of Roman Catholic (Arch-)dioceses for Legal and Economic Matters)
Kirchengemeinden und die aus ihnen gebildeten Verbände	Parishes and their associations
Diverse Ordensgemeinschaften bzw. Einzelklöster	Several religious orders and monastic communities
	3. Old Catholics
3. Alt-Katholiken	3. Old Catholics
Katholisches Bistum der Alt-Katholiken	Catholic Diocese of the Old Catholics
	4. Protestant Free Churches
4. Evangelische Freikirchen	4. Protestant Free Churches
Bund Evangelisch-Freikirchlicher Gemeinden in Deutschland (Baptisten)	Baptists
Bund Freier evangelischer Gemeinden in Deutschland	Federation of Free Protestant Communities in Germany
Evangelisch-methodistische Kirche	Protestant Methodist Church
Selbständige Evangelisch-Lutherische Kirche (SELK)	Independent Protestant-Lutheran Church
Evangelisch-Lutherische (altlutherische) Kirche (in ehemals preußischen Gebieten)	Protestant-Lutheran (old-Lutheran) Church (in former Prussian areas)
Evangelische Brüder-Unität (Herrnhuter Brüdergemeine)	Protestant Brethren Unity
Mennoniten	Mennonites
Bund Freikirchlicher Pfingstgemeinden	Federation of Free Church Pentecostal Community
Die Heilsarmee in Deutschland	The Salvation Army in Germany
	5. Orthodox Churches
5. Orthodoxe Kirchen	5. Orthodox Churches
Griechisch-Orthodoxe Metropole in Deutschland	Greek-Orthodox Metropolitan in Germany
Russisch-Orthodoxe Kirche im Ausland	Russian Orthodox Church Abroad
Russisch-Orthodoxe Kirche (Moskauer Patriarchat)	Russian-Orthodox Church (Patriarchate of Moscow)
	6. Jewish Community
6. Jüdische Gemeinschaft	6. Jewish Community
Zentralrat der Juden in Deutschland	Central Council of the Jews in Germany
Jüdische Landesverbände	Jewish Land Associations
Jüdische Gemeinden/Israelitische Kultusgemeinden	Jewish Communities/Israelite Cult Community

<sup>34</sup> Rough list by the Federal Ministry of the Interior <[http://www.bmi.bund.de/cln\\_145/SharedDocs/Standardartikel/DE/Themen/PolitikGesellschaft/ohneMarginalspalte/Liste\\_Koerperschaft\\_Religionsgemeinschaften.html?nn=268184](http://www.bmi.bund.de/cln_145/SharedDocs/Standardartikel/DE/Themen/PolitikGesellschaft/ohneMarginalspalte/Liste_Koerperschaft_Religionsgemeinschaften.html?nn=268184)>, 6 Jul. 2010, for further and detailed information cf. Institut für Europäisches Verfassungsrecht (IEVR) (ed.), 'German Religious and Ideological Communities as Corporations under Public Law', <<http://www.uni-trier.de/index.php?id=26713>>, 6 Jul. 2010. Translation of names by the author.

7. Sonstige	7. Others
Neuapostolische Kirche	New Apostolic Church
Gemeinschaft der Siebenten-Tags-Adventisten	Community of Seventh-Day-Adventists
Apostelamt Jesu Christi	Apostleoffice Jesus Christ
Gemeinde Gottes	Community of God
Christengemeinschaft	Christian Community
Johannische Kirche	Church of John
(Erste) Kirche Christi, Wissenschaftler (Christian Science)	Christian Science
Bund Freireligiöser Gemeinden Deutschlands	Federation of Free Church Communities of Germany
Freireligiöse Landesgemeinschaften/Landesgemeinden bzw. Bund Freireligiöser Gemeinden Deutschlands	Free Religious Communities and their Federations
Freie Religionsgemeinschaften (Humanistische Gemeinde Freier Protestanten)	Humanists
Unitarische Freie Religionsgemeinde	Unitarians
Kirche Jesu Christi der Heiligen der letzten Tagen (Mormonen)	Church of Jesus Christ of Latter Day Saints (Mormons)
Bund für Geistesfreiheit Bayern	Union for Freedom of Thought Bavaria
Zeugen Jehovahs	Jehovah's Witnesses

Church tax is levied by the following religious communities:

In Baden Württemberg: Evangelical Church, Roman Catholic Church, Old Catholic Church, Israelite Religious Community, Free Religious Community Baden.

In Bavaria: Evangelical Church, Roman Catholic Church, Old Catholic Church, Israelite Cult Community.

In Berlin: Evangelical Church, French reformed Church, Roman Catholic Church, Jewish Community.

In Brandenburg: Evangelical Church, Roman Catholic Church.

In Bremen: Evangelical Church, Evangelical Lutheran Church; Evangelic Reformed Church, Roman Catholic Church, Israelite Community.

In Hamburg: Evangelical Church, Roman Catholic Church.

In Hesse: Evangelical Church, Roman Catholic Church, Old Catholic Church, Jewish Communities, Free Religious Communities.

In Mecklenburg-Western Pomerania: Evangelical Lutheran Church, Evangelical Church, French Reformed Church, Roman Catholic Church.

In Lower Saxony: Evangelical Lutheran Church, Evangelical Reformed Church, Roman Catholic Church, Old Catholic Church.

In North Rhine-Westphalia: Evangelical Church, Evangelical Lutheran Church, Evangelical Reformed Church, Roman Catholic Church, Old Catholic Church, Jewish Land associations of the communities North Rhine and the Cult Community Westphalia Lippe and the Synagogue Community Cologne.

In Rhineland-Palatinate: Evangelical Church (Protestant), Evangelical

Lutheran Church, Evangelical Reformed Church, Roman Catholic Church, Old Catholic Church, Jewish Cult Community, Free Religious Community, Unitarian Religious Community.

In Saarland: Evangelical Church, Evangelical Lutheran Church, Evangelical Reformed Church, Roman Catholic Church, Jewish Synagogue Community Saar.

In Saxony: Evangelical Lutheran Church, Evangelical Church, Roman Catholic Church.

In Saxony-Anhalt: Evangelical Lutheran Church, Evangelical Church, Roman Catholic Church.

In Schleswig-Holstein: Evangelical Lutheran Church, Evangelical Reformed (Evangelical) Church, Roman Catholic Church, Old Catholic Church.

In Thuringia: Evangelical Lutheran Church, Evangelical Church, Roman Catholic Church.

## **2.8. CHURCH DUE**

Because of the links with state taxes, tax exemptions also affect the churches' own church tax. It is estimated that about one third of all church members pay no church tax because they are not liable to income tax. In some cases the churches attempt to make up for it by demanding an alternative contribution to the church, which is independent of income tax. This is usually called church due (Kirchgeld). It applies often in cases of married couples who are liable to joint assessment of husband and wife for income or wage tax and in which one of the spouses earns the money, but is not a member of a church and therefore is not liable to church tax, and the other spouse is a member of a church, but has no or little income and therefore pays no or very little church tax. The latter spouse is then liable to pay the church due, because in fact he or she does have enough means to support his or her church.

## **2.9. CASE LAW**

Quite a number of court decisions have been delivered in respect of church tax as provided for in Article 140 GG in conjunction with Article 137 section 6 WRV<sup>35</sup>.

---

<sup>35</sup> BVerfG 14 Dec. 1965, BVerfGE 19, 206 et seq.; BVerfG 14 Dec. 1965, BVerfGE 19, 242 et seq.; BVerfG 14 Dec. 1965, BVerfGE 19, 248 et seq.; BVerfG 14 Dec. 1965, BVerfGE 19, 253 et seq.; BVerfG 14 Dec. 1965, BVerfGE 19, 268 et seq.; BVerfG 14 Dec. 1965, BVerfGE 19, 226, 228; BVerfG 14 Dec. 1965, BVerfGE 19, 282 et seq.; BVerfG 14 Dec. 1965, BVerfGE 19, 288; BVerfG 20 Apr. 1966, BVerfGE 20, 40; BVerfG 31 Mar. 1971, BVerfGE 30, 415 et seq.; BVerfG 8 Feb. 1977, BVerfGE 44, 37 et seq.; BVerfG 8 Feb. 1977, BVerfGE 44, 59 et seq.; BVerfG 17 Feb. 1977.

The Federal Constitutional Court has repeatedly ruled that the church tax can be levied on the members of the specific religious community only.

Whoever does not want to pay the church tax can leave the church by way of a statement declared before a state authority. This follows from the right not to believe and not to support a specific religious community which is entailed in the freedom of religion or belief.

It does amount to a limitation on this right that a former member of a religious community who has left the church in this way can be obligated to pay church tax until the end of the month following his or her declaration of secession<sup>36</sup>. This has been upheld by ruling that the well functioning of the tax levy system is a constitutional value and that a relatively short time of further duty to pay the tax is not a disproportionate burden for the one concerned.

From the system of church tax collection by the state tax authorities follows the employer's duty to transfer the church tax of its employees together with the general wage tax to the state tax authorities. The Federal Constitutional Court has seen this to be in conformity with the rights of the employer, because the church tax system is based in Article 140 GG in conjunction with Article 137 section 7 WRV and thus amounts to a limitation to the rights of others prescribed by the constitution<sup>37</sup>. The administration, the transfer, and also the liability of the employer for this payment foreseen by the church tax laws has been held constitutional by the Federal Constitutional Court, because it amounted to a normal duty of private persons vis-à-vis of the state<sup>38</sup>. This system also means that the membership of an employee in a religious community that is entitled to levy taxes and makes use of the state tax collection service is printed on his or her wage tax card. The Federal Constitutional Court has held that this does not violate constitutional rights of the employee<sup>39</sup>.

The Federal Constitutional Court has upheld in 1994 the general practice by which the amount of unemployment aid in the general public unemployment insurance system is calculated taking into account the 'normal' deductions from the gross income of an employee regardless of whether the unemployed individual belongs to a qualified religious community or not<sup>40</sup>. This means that the average amount paid in church taxes is a negative factor in the

---

BVerfGE 44, 103 et seq.; BVerfG 23 Oct. 1978, BVerfGE 49, 375 et seq.; BVerfG 7 Oct. 1980, BVerfGE 55, 32 et seq.; BVerfG 23 Oct. 1986, BVerfGE 73, 388 et seq.; BVerfG 23 Mar. 1994, BVerfGE 90, 226 et seq.

<sup>36</sup> BVerfG 8 Feb. 1977, BVerfGE 44, 59 et seq.

<sup>37</sup> BVerfG (K) 27 Aug. 1987, *Höchststrichterliche Finanzrechtsprechung* 27 (1988): 583.

<sup>38</sup> BVerfG 17 Feb. 1977, BVerfGE 44, 103 et seq.

<sup>39</sup> BVerfG 23 Oct. 1978, BVerfGE 49, 375 et seq.

<sup>40</sup> BVerfG 23 Mar. 1994, BVerfGE 90, 226 et seq.

calculation of the amount of the unemployment aid. The Federal Constitutional Court has held that this practice does neither violate freedom of religion or belief nor the guarantee of property, because the authorities are allowed to generalize to a certain extent to facilitate administration. However, this would not apply anymore when no longer a clear majority of the employees would belong to a religious community with the right to levy taxes. The legislator is required to monitor the development, especially in the light of the fact that in the east of Germany a large part of the employees does not belong to any religious community.

### 3. STATE SUBSIDIES

#### 3.1. STATE SUBSIDIES IN GENERAL

As a result of repeated expropriation of church property in the past, the churches in Germany now have only a relatively small amount of property. As compensation for the secularization following the *Reichsdeputationshauptschluss* of 1803 (the last basic law of the old German Reich that reorganized the Empire which finally ceased to exist in 1806), a series of government decisions guaranteed funds for the churches. They are guaranteed by Article 138 section 1 WRV in conjunction with Article 140 GG. This provision also envisages the ending of those payments which are necessarily linked to the payment of compensation; this so far has not been pursued on grounds of impracticality. In addition, other subsidies granted by the state are often related to long standing claims of the churches; an important example is the fact that local authorities must discharge their public duty to contribute to the maintenance of church buildings. Likewise, on the basis of contractual terms, there are some obligatory contributions to be made by the state to the church, such as subsidies to the salaries of church officials. In total, these so-called dotations resulting from former expropriations and treaty obligations amount to some 462 million euros each year.

#### 3.2. SPECIFIC ISSUES OF STATE SUBSIDIES

There are quite a number of religious activities that are sponsored directly or indirectly by public funds<sup>41</sup>. However, state funds or subsidies only contribute to a small part to the church finances.

A considerable part of state subsidies results from historical state commitments such as the compensation for the secularization following the *Reichsdeputationshauptschluss*. In addition, other subsidies granted by the

<sup>41</sup> See Gerhard Robbers, 'Förderung der Kirchen durch den Staat', in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, ed. Joseph Listl & Dietrich Pirson, vol. 1, 2nd edn (Berlin: Duncker & Humblot, 1994), 867.

state are often related to long standing claims of the churches; an example is the fact that the local authorities must discharge their public duty to contribute to the maintenance of church buildings. These very often have their basis in the general public use of church towers as outlook for fire protection or later as general clock tower for the local community. The Federal Administrative Court has ruled in 2009 that local subsidies for churches that have been contracted before taking effect of the 1919 Weimar Constitution remain valid. They are subject to change according to general rules of administrative law when the basic general circumstances undergo a substantive change. Accordingly, since no such substantive change had occurred, the Federal Administrative Court has upheld the maintenance obligations in the West German Länder<sup>42</sup>. However, the same court has ruled in 2008 that the subsidies by municipalities in the former German Democratic Republic have ceased to exist, because they have not explicitly been upheld by the 1990 unification treaty<sup>43</sup>. This highly debatable decision amounts to the greatest expropriation of the churches since the 1803 *Reichsdeputationshauptschluss*.

Teachers of religion in public schools are paid by the state. Also, military chaplains are paid by the state as is the case for professors of theology in state universities.

Further, many churches receive allocations from the state for activities in the same way as other publicly funded activities: it is part of the idea of state neutrality that church activities are not to be put in a worse position than that of, say, state-funded local athletic clubs.

Few religious buildings are –for historical reasons– still property of the state. This is the background of the case of the St. Salvator Church in Munich that the Federal Constitutional Court decided in 1998 between two competing religious communities<sup>44</sup>. Originally a Roman Catholic church the St. Salvator church was secularized in the course of the 1803 *Reichsdeputationshauptschluss* and became property of the Bavarian state. The then Bavarian King Ludwig I decreed in 1828 that the 'Greek Orthodox Cult' was permitted to use the church free of charge; in conformity with the decree the church was since 1833 under the canon law jurisdiction of the Greek Orthodox Autocephaly Church of Greece. Since 1924 the complainant, a registered association, was the parish of the Autocephaly Church of Greece using the St. Salvator Church; the priest had been sent by

<sup>42</sup> BVerwG 5 Feb. 2009, *Neue Zeitschrift für Verwaltungsrecht-Rechtsprechungsreport* 22 (2009), 590 et seq..

<sup>43</sup> BVerwG 11 Dec. 2008, *Thüringer Verwaltungsblätter* 2009, 102–105.

<sup>44</sup> BVerfG 13 Oct. 1998, BVerfGE 99, 100 et seq.; see also the interim order by the Federal Constitutional Court in BVerfG 13 Feb. 1997, *Neue Zeitschrift für Verwaltungsrecht* 16 (1997): 782 et seq. and BVerfG 30 Nov. 1983, *Neue Juristische Wochenschrift* 37 (1984): 968 et seq.



the Metropolitan of Germany, which had been erected by the Ecumenical Patriarchy. In 1976 conflicts arose between the parish and the Metropolitan, in the course of which the Metropolitan ordered the parish priest not to make use of the church any more. The parish then had its cantor ordained as priest of the 'Church of the true Orthodox Christians of Greece and of the Diaspora', a split-off from the Autocephaly Church of Greece since the 1920ies; after that priests of that split-off church served as priests in the St. Salvator church. The Bavarian government ended the right of the complainant to use the church building and ordered the priest to hand over the premises. The Federal Constitutional Court decided that this was in conformity with the constitution. The use permit's original purpose was the use by the Autocephaly Church of Greece; it had to be left to the autonomous decision of that church to determine which unit is one of her parishes. In ending the right of use by the split-off parish state authorities followed the original will and purpose of the decree in conformity with state neutrality and did not interfere with any right to church property protected by Article 138 section 2 WRV in conjunction with Article 140 GG.

#### 4. EXAMPLES OF FACTS AND FIGURES

##### 4.1. THE EVANGELICAL CHURCH IN GERMANY

It is difficult to give reliable data on the annual amount of funds that are allocated for religious purposes, because there are numerous sources and recipients of funding. Church taxes and equivalent membership contributions in 2008 amounted for the Protestant Churches (EKD) to EUR 4,585,500,000<sup>45</sup> while the Catholic Church had an overall income of EUR 5,066,000,000<sup>46</sup>, forming a total of EUR 9,651,500,000. The Protestant Church in Germany has published the following account of income and expenses for 2005<sup>47</sup>:

Income by Sources	Mio. EUR	Per cent
Church Tax and Parish Contribution	3.991	40.1
Credits and Subsidies for Building Maintenance and Investments: Income from Sales	1.692	17.0
Subsidies and Contributions by Third Persons	1.777	17.9
State dotations	232	2.3

<sup>45</sup> Evangelische Kirche in Deutschland (ed.), 'EKD-Statistik Kirchensteuer 2008' (as of 2005), <<http://www.ekd.de/statistik/kirchensteuer.html>>, 6 Jul. 2010.

<sup>46</sup> Katholische Kirche in Deutschland (ed.), 'Kirche erzielt Rekordhoch in der Kirchensteuer', <<http://www.katholisch.de/Nachricht.aspx?NId=715>>, 6 Jul. 2010.

<sup>47</sup> Kirchenamt der Evangelischen Kirche in Deutschland, 'Kirche in Deutschland. Zahlen und Fakten zum kirchlichen Leben 2009', <[http://www.ekd.de/download/broschuere\\_2009\\_internet.pdf](http://www.ekd.de/download/broschuere_2009_internet.pdf)>, 6 Jul. 2010.

Fees for Church services, e.g. Parents' Contributions in Children Institutions	1,995	20.0
School Tees, Care Tees, etc. Income from Property, Rents, Reimbursements		
Interests		
Collections, Gifts	266	2.7
Income Total	9,954	100.0

Similar data apply for the Catholic Church; these data are published for each diocese independently. There are no comprehensive data available for other religious communities.

The functioning of the Evangelical Church causes costs of a total of about EUR 10 Billion per year, which are covered by the Evangelical Church in Germany (EKD) and its Member Churches, church districts and parishes<sup>48</sup>. Data for the Catholic Church is only available on the diocese level. Among the twenty-seven dioceses, the large Archdiocese of Cologne, for example, spent EUR 782 million in 2009<sup>49</sup>. The rather small diocese of Eichstätt spent EUR 100 million<sup>50</sup>.

Expenditures of the Protestant churches (EKD and its Member Churches)	EUR	(in Percent millions)
Priests and Religious Education	1,874	18.8
Parish Work and Work with Children and Young People	1,212	12.2
Cemeteries	178	1.8
Other Special Church Services	174	1.8
Kindergartens	1,758	17.7
Diaconical Services	123	1.2
Other Parish Diaconical Work	422	4.2
Ecumenic Work and World Mission	152	1.5
Public and Publicity Work	73	0.7
Education and Science	230	2.3
Management and Administration	761	7.6
Administration of Property	303	3.0
Maintenance of Church Real Property and Buildings	1,068	10.7
Other Tasks (Pensions, Reduction of Debts. Interests, Insurance, etc.)	1,627	16.3
Expenditure Total	9,954	100.0

The most important source of income is the church tax. It is paid by church members who are taxable for income and wage tax; these amount to about 40% of the members of the EKD and its Member Churches. Further

<sup>48</sup> Evangelische Kirche in Deutschland (ed.), 'EKD-Statistik Kirchensteuer 2008' (as of 2005), <<http://www.ekd.de/statistik/kirchensteuer.html>>, 6 Jul. 2010.

<sup>49</sup> Archdiocese of Cologne (ed.), 'Wirtschaftsplan', <<http://www.erzbistum-koeln.de/erzbistum/bistumsverwaltung/hauptabteilungen/finanzen/kirchensteuer/wirtschaftsplan/>>, 6 Jul. 2010.

<sup>50</sup> Diocese of Eichstätt (ed.), 'Haushalt'.

<<http://www.bistum-eichstaett.de/bistum/haushalt/haushalt-2009/>>, 6 Jul. 2010.

income results from church dues (Kirchgeld), donations and collections, state dotations, promotion funds and subsidies from the public authorities. State dotations amount to 2.2% of the total income of the EKD and its Member Churches. Promotion funds and subsidies are given by the public authorities to religious communities for activities that serve the general public. Everybody is entitled to such payments who, under similar conditions, provides similar activities and services. Payments come from a variety of sources such as the state, local communities, social welfare associations, social security insurance authorities, local health insurance funds or foundations. These benefits amount to 17.9% of the total income of the EKD and its Member Churches. Another part of the expenditures of the EKD and its Member Churches is covered by fees and remunerations for services by church institutions such as kindergartens, health care institutions or schools; furthermore, church properties generate some income by rent or lease payments. Some 20% of the total income of the EKD and its Member Churches result from such sources.

#### **4.2. THE EVANGELICAL LAND CHURCH IN BADEN**

For the Evangelical Land Church in Baden, as an example for an individual Protestant church, the Act on The Levy of Taxes by Public Law Religious Communities in Baden-Württemberg (KiStG BW) applies. While the tax rate varies among the Länder between 8 and 9% of the income or wage tax due, in Baden-Württemberg it is 8% of the income or wage tax due<sup>51</sup>. In Baden-Württemberg, the administration of the church tax can be transferred to the state tax authorities upon application by the relevant religious community according to § 17 KiStG BW. The fee that the religious community has to pay for this service amounts to 3% of the respective total church tax income (§ 23 KiStG BW).

As far as the Evangelical Land Church in Baden is concerned the church has paid out of its central funds (which do not include the money spent by individual parishes and diaconical institutions) as contribution to its charitable activities in the year 2008:

EUR 12.5 million for evangelical kindergartens;

EUR 9.8 million for the diaconical works of evangelical church parishes and diaconical associations in the church districts;

EUR 3.6 million to the diaconical work of the Evangelical Land Church in Baden e.V. in its capacity as the leading association for the indepen-

---

<sup>51</sup> Proclamation of Decisions on church tax in the Land Baden-Württemberg for the year 2008 (Bekanntmachung über die Kirchensteuerbeschlüsse im Land Baden-Württemberg für das Kalenderjahr 2008) of 28 Jan. 2008, BStBl. 2008 I, S. 3786.

dent diaconical institutions (that are those which are not diaconical works of church parishes or church districts).

In sum this amounts to EUR 25.9 million for the area of the Evangelical Land Church in Baden. Such payments are made without any refinancing by the state.

The Evangelical Land Church in Baden has, as is shown by its budget, received state payments inter alia for the following areas. This table for the year 2007 shows that the expenditures are considerably higher than the payments received by state authorities<sup>52</sup>.

Expenditures of the Evangelical Land Church in Baden (2007)	Euros (€)
<u>Payments of the Land (Total, 2007)</u>	13,300,000 €
<i>Youth and Childcare</i>	
Total Expenditures in this Field	17,900,000 €
<i>Religious Instruction</i>	
<u>Remuneration Payments by the Land (separate)</u>	7,100,000 €
Total Expenditures in this Field	25,500,000 €
<i>Parish Pastoral Service</i>	
Total Expenditures in this Field	113,800,000 €
<i>Special Spiritual Care (e.g., Hospitals)</i>	
Total Expenditures in this Field	4,700,000 €
<i>Education</i>	
Total Expenditures in this Field	18,700,000 €

These state and municipal payments are based on a variety of legal provisions. The lump sum payments for the parish pastoral service are based on Article 25 section 3 number 1 of the Evangelical Church Treaty Baden-Württemberg (EvKiVBW) 'for purposes of salaries, pensions and support of pastors'<sup>53</sup>. The state payments for religious instruction have their basis in the agreement between the Ministry of Culture and the Church Leading Bodies in Baden-Württemberg of 15 August 1997 about the accounting of the payments of the Land for religious instruction provided by ecclesiastical teachers<sup>54</sup> as well as in Article 8 section 5 Evangelical Church Treaty Baden-Württemberg and the Final Protocol in re of that provision.

<sup>52</sup> See Evangelische Landeskirche in Baden (ed.), 'Einnahmen & Ausgaben', <<http://ekiba.de/1848.php>>, 6 Jul. 2010.

<sup>53</sup> Available at Verband Kirchlicher Mitarbeiterinnen und Mitarbeiter Gewerkschaft für Kirche und Diakonie – Landesverband Baden (ed.), <<http://www.vkm-baden.de/infothek/evkivbw.htm>>, 30 Sep. 2009.

<sup>54</sup> Vereinbarung zwischen dem Kultusministerium und den Kirchenleitungen in Baden-Württemberg vom 15 Aug. 1997 über die Abrechnung der Leistungen des Landes für den von kirchlichen Lehrkräften erteilten Religionsunterricht an öffentlichen Schulen. Not published.

The services of the evangelical hospitals and other health care institutions of the evangelical church are almost entirely financed by payments by the health insurance institutions in remuneration of the relevant services. These are not state payments, but means that are provided by the community of insured persons.

#### 4.3. ARCHDIOCESE OF FREIBURG

The following table shows comparable data for the Roman-Catholic Archdiocese of Freiburg in the year 2008<sup>55</sup>:

The Archdiocese of Freiburg has paid as contribution to its charitable activities in the year 2008 a total of EUR 307.7 million. For structural reasons and easier comparison with the data regarding the Evangelical Church in Baden as given above, the following data include the individual parishes:

EUR 28.34	million for	Catholic kindergartens;
EUR 113.35	million for	charitable work of parishes;
EUR 165.30	million to	the Caritas institution.

#### 4.4. THE JEWISH FAITH COMMUNITIES

The Federal Republic pays an amount of EUR 3 million annually to the Central Council of Jews in Germany according to a treaty with that community. Similar treaties exist between the Länder and the Jewish communities. For example, the Land Saxony-Anhalt pays an amount of approximately EUR 1.1 million (basis of March 2006) to the Jewish community, which is subject to a yearly adaptation equivalent to the pay of officials of the Land. Equivalent amounts apply to the Land Hesse: EUR 3.7 million per annum in 2008 to 2010<sup>56</sup>.

### 5. INDIRECT FINANCING OF RELIGIOUS COMMUNITIES

Religious communities receive a certain number of tax exemptions and exemptions from state fees. They have been explained in detail above. Many of them have their reason in the expropriations of the churches (and also the Jewish communities) in the course of history. Other exemptions find their reason in the idea that religious communities contribute actively to public life and should thus be supported as are other entities and participants in public life.

<sup>55</sup> See Erzbisum Freiburg (ed.), 'Geschäftsbericht 2008/2009', <[http://www.ordinariat-freiburg.de/fileadmin/gemeinsam/download-archiv/finanzen/Geschaeftsbericht\\_2008-09.pdf](http://www.ordinariat-freiburg.de/fileadmin/gemeinsam/download-archiv/finanzen/Geschaeftsbericht_2008-09.pdf)>, 6 Jul. 2010.

<sup>56</sup> See Bundesministerium des Inneren (ed.), 'Verträge mit der jüdischen Gemeinschaft', [http://www.bmi.bund.de/cln\\_095/SharedDocs/Standardartikel/DE/Themen/PolitikGesellschaft/KircheReligion/Vertraege\\_mit\\_der\\_juedischen\\_Gemeinschaft.html?nn=268184](http://www.bmi.bund.de/cln_095/SharedDocs/Standardartikel/DE/Themen/PolitikGesellschaft/KircheReligion/Vertraege_mit_der_juedischen_Gemeinschaft.html?nn=268184), 15 Jul. 2010.

The church tax and charitable donations to the religious communities may be deducted from income tax, § 10 section 1 number 4, § 10b section 1 Income Tax Code (EStG); this applies equally to donations to non-profit organizations. Donations to religious communities can be deducted from the taxable income up to 20% of the total income.

The existing exemptions from taxes and fees are extremely detailed and spread in manifold laws. There are no statistical data on how much those benefits would amount to.

Religious communities are exempt from corporate income tax as far as they perform religious and charitable functions, § 5 section 1 number 9 Corporate Income Tax Act (KStG). This also applies to the inheritance and gift tax, § 13 section number 16, 17 Inheritance and Gift Tax Act (ErbStG) the tax on real property, § 3 section 1 number 4, 5 Real Property Tax Act (GrStG) and to the local business tax, § 3 number 6 Local Business Tax Act (GewStG).

Religious and charitable acts performed by religious communities are not subject to value added tax, § 4 number 18 litera a Turnover Tax Act (UStG).

Religious communities that are public law corporations are exempt in very specific and various ways from certain court fees according to varying provisions of the various Länder, for example, § 7 section 1 number 1 Legal Expenses Act Baden-Württemberg (LJKG BW). The same applies to a number of administrative fees<sup>57</sup>.

---

<sup>57</sup> For example, § 8 s. 1 no. 5 Act on Administrative Fees of North Rhine-Westphalia (GebG NRW), § 1 s. 1 no. 1 Act on Fee Exemption, Forbearance and Acceptilation of Judicial Costs (GerGebBefrG NRW).