

Instructions on the obligation for public servants to remain loyal to the constitution

According to the Bavarian Public Servants Act (Bayerisches Beamtengesetz), public servants (in this case: with the title of *Beamte*) must adhere to the free democratic basic order within the meaning of the German and Bavarian constitutions and work to preserve them. In particular, this obligation of public servants is irreconcilable with any parties, associations, or organisations that reject or actively oppose the free democratic basic order within the meaning of the German and Bavarian constitutions, and with any other anti-constitutional endeavours [Section 62 (2) of the Bavarian Public Servants Act].

Therefore, according to Section 9 (1)(2) of the Bavarian Public Servants Act, public servants may only be appointed if it can be guaranteed that they will defend the free democratic basic order within the meaning of the constitutions of the Federal Republic of Germany and the Free State of Bavaria at all times.

The same provisions also apply to judges [Section 9 (2) of the German Judiciary Act; Section 2 (1) of the Bavarian Judiciary Act in combination with Section 62 (2) of the Bavarian Public Servants Act].

The obligation for employees to avow themselves to the free democratic basic order within the meaning of the Constitution in their entire demeanour results from Section 3 (1)(2) of Public Service Collective Bargaining Agreement of the German Länder (*Tarifvertrages für den öffentlichen Dienst der Länder*; TV-L).

According to decisions of the Federal Constitutional Court (cf. verdict from 23 October 1952 – Az. | BvB | 51 – Collection of the verdicts of the Federal Constitutional Court Vol. 2 p. 1 ff. – verdict from 17 August 1956 – Az. 1 BvB 2 51 – Collection of the verdicts of the Federal Constitutional Court Vol. 3 p. 85 ff. –) the free democratic basic order is defined in the German Constitution as a constitutional form of government without any kind of tyranny or despotism, based on the self-determination of the people according to the will of the respective majority and on liberty and equality. The free democratic basic order is the opposite of a totalitarian state, which as the sole ruling power rejects human dignity, liberty, and equality. Among the basic tenets of this order are:

- Respect for the human rights identified in the constitution, especially the individual's right to life and self-determination;
- The sovereignty of the people;
- The separation of powers;
- The responsibility of the government;
- The legality of the administration;
- The impartiality of the courts;
- The multi-party system;
- The equality of opportunity for the parties;
- The right to constitutional education and to exercise opposition.

The participation in efforts that are in opposition to the free democratic basic order characterised by the aforementioned tenets is irreconcilable with the duties of a public servant. It is of no consequence whether these efforts are pursued within an organisation or not.

Applicants who participate in any anti-constitutional efforts or support such efforts may not be considered for positions as public servants.

Public servants and judges who are guilty of such a neglect of duty have to expect that disciplinary action will be taken against them to remove them from their positions.

Employees will be extraordinarily dismissed according to Section 626 (1) of the German Civil Code in such cases.

Questionnaire to check loyalty to the constitution

Please note that **ONLY** the German version of this document is legally binding and has to be signed. The English translation is provided to help you fill out the original German document.

I have taken note of the list of extremist or extremist-influenced organisations. I am aware that in the following questions I must also disclose membership in or collaboration with other extremist or extremist-influenced organisations as well as extremist or extremist-influenced foreign organisations.

I answer the subsequent questions as follows:

1. Are you or were you a member of one or more extremist or extremist-influenced organisations?

- No
 Yes

(Organisation)

(Period of time)

(Function)

2. Do you support one or more extremist or extremist-influenced organisations or other anti-constitutional efforts or have you supported them in the past?

- No
 Yes

(Organisation, or other anticonstitutional effort)

(Period of time)

(Type of support)

3. Did you work for the former Ministry for State Security (*Ministerium für Staatssicherheit*), the Institution for National Security (*Amt für Nationale Sicherheit*) of the former GDR or one of the subdivisions of these organisations, or foreign intelligence services, or similar institutions?

- No
 Yes

(Period of time)

(Function or type of support)

Were you a so-called unofficial employee of the former Ministry for State Security (*Ministerium für Staatssicherheit*) or of the Institution for National Security (*Amt für Nationale Sicherheit*) of the former GDR or foreign intelligence services/institutions or did you sign an agreement to work with any of the named bodies?

- No
 Yes

If yes, further details:

4. Has legal action been taken against you as a result of breaching basic human rights or constitutional law?

- No
 Yes

If yes, brief explanation:

If an enquiry has to be made according to Section II No. 2 or 4 due to this disclosure, I give permission for the necessary information to be requested from the State Office for Protection of the Constitution (*Landesamt für Verfassungsschutz*), from the Federal Commissioner for the Documentation of the State Security Service of the former GDR (*Bundesbeauftragter für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik*) and from the Central Proof and Documentation Centre of the State Judiciary Administration (*Zentrale Beweismittel- und Dokumentationsstelle der Landesjustizverwaltungen*).

(Place, date)

(Signature)

Excerpt from the
State government's public notice on obligation for public servants to remain loyal to the constitution

From 3 December 1991 (StAnz No. 49),
Last amended through public notice on 27 November 2007 (StAnz. No. 50)

...

Paragraph II

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2. If due to the answers given in the questionnaire, the refusal of the applicant to sign the declaration as per Appendix 3 and 4, or other facts that have become known there is any doubt as to whether the applicant would try to preserve the free democratic basic order within the meaning of the German and Bavarian constitutions at all times, these doubts must be eliminated before appointment of the candidate. The means by which this shall be accomplished include

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- An inquiry sent to the State Office for the Protection of the Constitution asking for any information leading to reasonable objections to an appointment. The State Office for the Protection of the Constitution is obligated to respond to such requests without delay. If there are any insights on file, disclosure shall be limited to such facts as are usable in a court of law.

- An inquiry sent to the Federal Commissioner for the Documents of the State Security Service of the former German Democratic Republic with the applicant's consent in the cases mentioned in Section 20 (1)(6)(d) and (h) and Section 21 (1)(6)(d) and (h) StUG.

- An inquiry sent to the Central Office for Evidence and Documentation of the State Administration Justice Department with the consent of the applicant.

3. In case of applicants from the acceding territory who were born before 12 January 1972, Section 20 (1)(6)(d) and (h) and Section 21 (1)(6)(d) and (h) StUG notwithstanding, a request shall always be sent to the Federal Commissioner for the Documents of the State Security Service of the former German Democratic Republic with the applicant's consent, due to the possibility of the applicant having worked for the Ministry for State Security/Office for National Security of the former GDR.

...

4. In case of applicants born in any of the following states or who are citizens of any of the following states, an inquiry shall be sent to the State Office for the Protection of the Constitution, No. 2 notwithstanding:

Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Israel (persons of Palestinian ethnicity), Jordan, Kazakhstan, Kirgizstan, Kuwait, Lebanon, Libya, Mauretania, Morocco, Oman, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, Tajikistan, Tunisia, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen.

The same shall apply to applicants who have no citizenship (so-called stateless persons) or whose citizenship is unknown or unclear.

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Declaration

Having been informed of my obligation of loyalty to the constitution in the public service, I hereby declare that I agree with the named basic principles of the free and democratic constitutional order, and that I will behave in a manner at all times which advocates and preserves the free and democratic constitutional order as defined by constitutional law.

I affirm that I do not support efforts which are against the free and democratic constitutional order or one of its previously mentioned basic principles and that I am not a member/former member of an organisation which is against this. I also acknowledge receipt of the list of extremist organisations.

I understand that:

- If I have provided incorrect or incomplete information, I may not be employed, an existing appointment may be recalled and the employment contract will be contested.
- I can expect to be removed from the service or receive an instant dismissal if I breach my duty of loyalty or my official duties.

(Place, date)

(Signature)

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Declaration to the employer

I hereby confirm to my public employer or employer in Bavaria, the correctness of my declaration of duty to the loyalty to the constitution according to Annex 3 of the Declaration of the Bavarian State Government regarding the duty to loyalty to the constitution in the public service.

(Place, date)

(Signature)