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Excerpt

From the German Criminal Code in the version published on 13.11.1998 (BGBl. I p. 3322) last amended by the Act of 18.12.2018 (BGBl. I p. 2639) m.w.v. 22.12.2018

§ 94 Treason

(1) Who a state secret

1. communicates to a foreign power or one of its intermediaries, or
 2. otherwise passes it on to an unauthorized person or makes it publicly known in order to disadvantage the Federal Republic of Germany or to favor a foreign power,
- and thereby causes a risk of serious harm to the external security of the Federal Republic of Germany shall be punished by imprisonment of not less than one year.

(2) In particularly serious cases, the penalty is life imprisonment or imprisonment for not less than five years. As a rule, a particularly serious case exists if the offender

1. misuses a position of responsibility that places him or her under a special obligation to protect state secrets, or
2. the act creates a risk of particularly serious harm to the external security of the Federal Republic of Germany.

§ 95 Disclosure of state secrets

(1) Any person who allows a state secret, which is kept secret by an official body or at its instigation, to reach an unauthorized person or makes it known to the public and thereby causes a risk of serious damage to the external security of the Federal Republic of Germany shall be punished by imprisonment for a term of six months to five years if the act is not punishable under Section 94.

(2) The attempt is punishable.

(3) In particularly serious cases, the penalty is imprisonment from one year to ten years. § 94 (2) sentence 2 shall apply.

§ 96 Treasonable spying; spying on state secrets

(1) A person who obtains a state secret in order to betray it (Section 94) shall be punished by imprisonment from one year to ten years.

(2) Any person who obtains a state secret, which is kept secret by an official body or on its instructions, in order to disclose it (Section 95), shall be punished by imprisonment for a term of six months to five years. The attempt is punishable.

§ 97 Disclosure of state secrets

(1) Any person who allows a state secret kept secret by an official body or at its instigation to be disclosed to an unauthorized person or makes it known to the public and thereby negligently causes a

risk of serious harm to the external security of the Federal Republic of Germany shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

(2) Any person who recklessly allows a state secret, which is kept secret by an official body or at its instigation and which was accessible to him by virtue of his office, his official position or an order issued by an official body, to reach an unauthorized person and thereby negligently causes the risk of serious harm to the external security of the Federal Republic of Germany shall be punished by imprisonment for not more than three years or a fine.

(3) The act is prosecuted only with the authorization of the federal government.

§ 97a Betrayal of illegal secrets

Whoever gives a secret that is because of one of the stipulations in

§ Section 93(2) is not a state secret, to a foreign power or to one of its intermediaries and thereby causes the danger of serious harm to the external security of the Federal Republic of Germany, shall be punished as a traitor (Section 94). § 96 (1) in conjunction with Section 94 (1) No. 1 shall apply mutatis mutandis to secrets of the kind described in sentence 1.

§ 97b Treason in mistaken assumption of an illegal secret

(1) If the offender acts in the cases of §§ 94 to 97 in the mistaken belief that the state secret is a secret of the kind referred to in section 97a, it shall, if

1. this error is to be blamed on him,
2. he does not act with the intention of counteracting the alleged infringement, or
3. the act is not an appropriate means to that end under the circumstances,

be punished in accordance with the designated provisions. As a rule, the act is not an appropriate means if the offender has not previously appealed to a member of the Bundestag for redress.

(2) If the state secret was entrusted or accessible to the perpetrator as a public official or as a soldier in the armed forces, he shall also be punished if the public official has not previously appealed to a superior officer, or the soldier to a disciplinary officer, for redress. This shall apply mutatis mutandis to persons with special obligations in the public service and to persons who have been obligated within the meaning of Section 353b (2).

§ 120 Prisoner release

(1) Whoever frees a prisoner, induces him to escape or assists him in doing so shall be punished by imprisonment for not more than three years or a fine.

(2) If the offender is required as a public official or as a person with a special obligation for public service to prevent the escape of the prisoner, the penalty shall be imprisonment for up to five years or a fine.

(3) The attempt is punishable.

(4) A prisoner within the meaning of subsections 1 and 2 shall be deemed equivalent to a person who is otherwise detained in an institution by order of the authorities.

§ 133 Breach of custody

(1) Any person who destroys, damages, renders unusable or removes from official custody any documents or other movable property which are in official custody or which have been given to him or to another person in official custody shall be liable to a custodial sentence not exceeding two years or to a monetary penalty.

(2) The same applies to documents or other movable objects that are in the official custody of a church or other religious society under public law or that have been officially given into the custody of the perpetrator or another person by the latter.

(3) Whoever commits the act on an object that has been entrusted to him or has become accessible to him as a public official or as a person with a special obligation for public service, shall be punished by imprisonment for not more than five years or a fine.

§ 201 Violation of the confidentiality of the word

(1) A penalty of up to three years' imprisonment or a fine shall be imposed on anyone who unauthorizedly

1. records the non-public spoken word of another person on a sound carrier or
2. uses a recording made in this way or makes it accessible to a third party.

(2) Likewise, anyone who unauthorized

1. eavesdrops on the non-public spoken word of another person with a listening device that is not intended for his or her knowledge, or
2. publicly communicates the wording or essential content of the non-publicly spoken word of another person recorded in accordance with subsection 1 no. 1 or heard in accordance with subsection 2 no. 1.

The act referred to in sentence 1 no. 2 shall be punishable only if the public communication is likely to prejudice the legitimate interests of another person. It shall not be unlawful if the public communication is made in order to safeguard overriding public interests.

(3) A penalty of imprisonment of up to five years or a fine shall be imposed on anyone who, as a

violates the confidentiality of the word as a public official or as a person with a special obligation to public service (paragraphs 1 and 2).

(4) The attempt is punishable.

(5) The sound carriers and listening devices used by the perpetrator or participant may be confiscated. § Section 74a shall apply.

§ 203 Violation of private secrecy

(1) Any person who unauthorizedly discloses another's secret, namely a secret belonging to the personal sphere of life or a trade or business secret, which he or she considers to be a

1. Physician, dentist, veterinarian, pharmacist or member of another medical profession that requires state-regulated training for the practice of the profession or the use of the professional title,
2. Professional psychologists with a state-approved scientific final examination,

3. Attorney-at-law, member of the bar, patent attorney, notary public, representative in legal proceedings, certified public accountant, sworn auditor, tax advisor, tax agent or organ or member of an organ of an attorney-at-law, patent attorney, auditing, accounting or tax consulting company,

4. Marriage, family, educational or youth counselor as well as counselor for addiction issues in a counseling center recognized by a public authority or corporation, institution or foundation under public law,

5. Member or authorized representative of a recognized advisory body pursuant to the §§ Sections 3 and 8 of the Pregnancy Conflict Act,

6. State-certified social worker or state-certified social pedagogue, or

7. Members of a private health, accident or life insurance company or of a private medical, tax consulting or insurance company or lawyer's clearing office

or has otherwise become known, shall be punished by a term of imprisonment of up to one year or a fine.

(2) A person shall also be punished for unauthorized disclosure of another's secret, namely a secret belonging to the personal sphere of life or a trade or business secret, which is considered to be a

1. Officer,

2. Those with a special obligation for the public service,

3. A person who performs duties or exercises powers under personnel representation law,

4. Member of an investigative committee, other committee, or council acting for a federal or state legislative body who is not himself or herself a member of the legislative body, or as an aide to such committee or council,

5. Publicly appointed expert who has been formally obliged to fulfill his duties conscientiously on the basis of a law, or

6. A person who has been formally obligated by law to conscientiously fulfill his or her duty of secrecy in the performance of scientific research projects,

has been entrusted or otherwise made known. Individual information about the personal or factual circumstances of another person which has been collected for public administration purposes shall be deemed equivalent to a secret within the meaning of sentence 1; sentence 1 shall not apply, however, if such individual information is disclosed to other authorities or other bodies for public administration purposes and the law does not prohibit this.

(2a) (omitted)

(3) No disclosure within the meaning of this provision shall be deemed to have occurred if the persons referred to in paragraphs 1 and 2 make secrets accessible to assistants working for them on a professional basis or to persons working for them in preparation for their profession. The persons referred to in paragraphs 1 and 2 may not disclose secrets of third parties to other persons involved in their professional or official activities, insofar as this is necessary for the utilization of the activities of the other involved persons; the same shall apply to other involved persons if they make use of other persons involved in the professional or official activities of the persons mentioned in paragraphs 1 and 2.

(4) A penalty of up to one year's imprisonment or a fine shall be imposed on anyone who unauthorizedly discloses a third party secret that has become known to him or her in the course of or on the

occasion of his or her work as a contributor or as a data protection officer working for the persons referred to in paragraphs 1 and 2. Likewise, a person shall be punished who

1. as a person referred to in paragraphs 1 and 2, has not ensured that any other cooperating person who unauthorizedly discloses a third party secret that has become known to him/her during the performance of his/her duties or on the occasion of his/her duties has been obliged to maintain secrecy; this shall not apply to other cooperating persons who are themselves a person referred to in paragraphs 1 or 2,

2. as a cooperating person referred to in paragraph 3, has made use of another cooperating person who unauthorizedly discloses a third party's secret of which he/she has become aware in the course of or on the occasion of his/her activity and has not ensured that the latter has been bound to secrecy; this shall not apply to other cooperating persons who are themselves a person referred to in paragraphs 1 or 2, or

3. after the death of the person obligated under sentence 1 or under paragraphs 1 or 2, unauthorizedly discloses a third party secret that he or she learned from the deceased or obtained from the deceased's estate.

(5) Paragraphs 1 to 4 shall also apply if the perpetrator discloses the third party secret without authorization after the death of the person concerned.

(6) If the perpetrator acts for remuneration or with the intention of enriching himself or another or harming another, the penalty is imprisonment for up to two years or a fine.

§ 204 Exploitation of third party secrets

(1) Any person who unauthorizedly discloses another's secret, namely a trade or business secret, the secrecy of which he is obligated to keep pursuant to § Section 203, shall be punished by imprisonment for not more than two years or a fine.

(2) § Section 203 (5) shall apply mutatis mutandis.

§ 331 Acceptance of advantage

(1) A public official, a European public official or a person with special public service obligations who demands, allows himself to be promised or accepts an advantage for himself or a third party for the performance of his duties shall be punished by imprisonment for not more than three years or a fine.

(2) A judge, member of a court of the European Union or arbitrator who demands, allows himself to be promised or assumes that he has performed or will perform a judicial act in return for an advantage for himself or a third party shall be punished by imprisonment for a term not exceeding five years or by a fine. The attempt is punishable.

(3) The act shall not be punishable under paragraph 1 if the perpetrator allows himself to be promised or accepts an advantage not demanded by him and the competent authority, within the scope of its powers, has either approved the acceptance in advance or the perpetrator reports to it without delay and it approves the acceptance.

§ 332 Corruptibility

(1) A public official, a European public official or a person with a special public service obligation who demands, allows himself to be promised or accepts a benefit for himself or a third party in return for having performed or will perform an official act and thereby has violated or would violate his official duties shall be punished with a term of imprisonment of six months to five months.

years. In less serious cases, the penalty is imprisonment for up to three years or a fine. The attempt is punishable.

(2) A judge, member of a court of the European Union or arbitrator who demands, allows himself to be promised or assumes an advantage for himself or a third party in return for the fact that he has performed or will perform a judicial act and has thereby violated or would violate his judicial duties shall be punished by imprisonment from one year to ten years. In less serious cases, the penalty shall be imprisonment for a term of six months to five years.

(3) If the perpetrator demands, allows himself to be promised or accepts the benefit in return for a future act, paragraphs 1 and 2 shall already be applied if he has shown himself willing to the other person,

1. In the act to violate his duties or,
2. to the extent that the act is within his or her discretion to be influenced by the benefit in exercising the discretion.

§ 353b Violation of official secrecy and a special duty of confidentiality

(1) Whoever unauthorizedly discloses a secret that has been entrusted to him as

1. public officer,
2. with a special obligation for the public service or
3. a person who performs duties or exercises powers under personnel representation law,

or has otherwise become known to him and thereby endangers important public interests, shall be liable to a custodial sentence not exceeding five years or to a monetary penalty. If the offender has negligently endangered important public interests by the act, he shall be punished with a custodial sentence not exceeding one year or with a monetary penalty.

(2) Whoever, except for the cases referred to in paragraph 1, unauthorizedly discloses an object or information which he is obliged to keep secret

1. on the basis of the decision of a legislative body of the Federation or of a country or one of its committees is obligated or
2. has been formally obliged by another official body with reference to the criminal liability of the breach of the duty of confidentiality,

to another or makes it public and thereby endangers important public interests, shall be punished by imprisonment for not more than three years or a fine.

(3) The attempt is punishable.

(3a) Aiding and abetting acts of a person referred to in Section 53, Subsection 1, Sentence 1, Number 5 of the Code of Criminal Procedure shall not be unlawful if they are limited to the taking, exploitation or publication of the secret or the object or the information which there is a special obligation to keep secret.

(4) The act is performed only with authorization. The authorization is granted

1. by the president of the legislative body

a) in the cases referred to in paragraph 1, if the perpetrator became aware of the secret during his activity at or for a legislative body of the Federation or of a Land,

b) in the cases referred to in paragraph 2, No. 1;

2. from the highest federal authority

a) in the cases referred to in paragraph 1, if the secret became known to the perpetrator during his activity otherwise at or for a public authority or at or for another official agency of the Federation,

b) in the cases referred to in paragraph 2, No. 2, if the perpetrator has been committed by an official body of the Federation;

3. by the supreme state authority in all other cases of paragraphs 1 and 2 No. 2.

§ 355 Violation of the tax secrecy law

(1) Who unauthorized

1. Relationships of another that he or she, as a public official, has

a) in an administrative procedure, an audit procedure or a judicial procedure in tax matters,

b) in criminal proceedings for a tax offense or in administrative fine proceedings for a tax offense,

c) for any other reason, by notification of a tax authority or by presentation of a tax assessment or a certificate on the findings made during taxation as required by law.

have become known, or

2. a trade or business secret of another person which has become known to him/her as a public official in one of the proceedings referred to in number 1,

is punishable by imprisonment of up to two years or a fine. The circumstances of another person or a trade or business secret of another person shall also have become known to the perpetrator as a public official in proceedings referred to in sentence 1 no. 1 if they result from data to which he had access and which he retrieved without authorization.

(2) The following shall have the same status as officers within the meaning of subparagraph 1 above

1. those with special obligations for public service,

2. officially consulted experts and

3. the holders of offices of churches and other religious societies under public law.

(3) The offense shall be prosecuted only upon application by the superior officer or the injured party. In the case of acts committed by officially contracted experts, the head of the authority whose proceedings are affected is entitled to file an application in addition to the injured party.

§ 358 Side effects

In addition to a term of imprisonment of not less than six months for an offense under sections 332, 335, 339, 340, 343, 344,

Section 345 (1) and (3), Sections 348, 352 to 353b

(1), sections 355 and 357, the court may disqualify a person from holding public office (section 45(2)).